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MISCELLANEOUS RECLAMATION LEGISLATION

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 230

A BILL FOR THE RELIEF OF THE CITY OF DICKINSON, NORTH DAKOTA

S. 252

A BILL TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONSTRUCT, OPERATE, AND MAINTAIN THE LAKE ANDES-WAGNER UNIT, SOUTH DAKOTA PUMPING DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM, SOUTH DAKOTA

S. 1704

A BILL TO AUTHORIZE AN INCREASE IN THE APPROPRIATION CEILING FOR THE NORTH LOUP DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM, NEBRASKA

H.R. 5028

AN ACT ENTITLED THE "LOWER COLORADO WATER SUPPLY ACT"

JULY 22, 1986

Printed for the use of the
Committee on Energy and Natural Resources

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S311-14

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MISCELLANEOUS RECLAMATION LEGISLATION

TUESDAY, JULY 22, 1986

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Frank H. Murkowski, presiding.

Present: Senators Murkowski, Ford, and Bradley.

Also present: Russell R. Brown, professional staff member; and William B. Conway, counsel for the minority.

OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator MURKOWSKI. Good morning. We will begin the hearing of the Subcommittee on Water and Power of the Energy and Natural Resources Committee. My name is Frank Murkowski.

The hearing this morning before the Subcommittee on Water and Power is to take testimony on four measures. The first is S. 230 for the relief of the city of Dickinson, ND.

Second is Senate bill 252 to authorize the Lake Andes-Wagner project in South Dakota.

The third is Senate bill 1704 to increase the appropriations ceiling for the North Loup project in Nebraska.

And last, H.R. 5028, the Lower Colorado Water Supply Act.

Without objection, the texts of the four measures and related legislative reports will appear in the hearing record at the conclusion of my remarks.

I welcome all of you to the subcommittee and I would comment to the many witnesses who have traveled here at substantial expense that we sincerely appreciate your efforts and concern and look forward to the statements this morning.

I see a number of familiar faces in the audience after hearings in Wagner, SD, last November. I would like to thank you again for the hospitality which you extended to me and others of the subcommittee who visited at that time. It was an interesting occasion, and I hope to be back on another invitation.

I do offer you a most sincere welcome, and I hope that you will have an opportunity to enjoy our warm weather and hospitality. It will not surpass the hospitality which you traditionally extend to us, however.

Because of the number of witnesses this morning, I intend to limit the testimony to 5 minutes to each witness. Your statements will be entered into the record in their entirety. I would appreciate it if you would be inclined to summarize your written statements.

The hearing record, I am told by Russ Brown, will be open for 2 weeks to allow for the submission of additional written materials.

[The texts of S. 230, S. 252, S. 1704, and H.R. 5028, and a prepared statement from Senator Wilson on H.R. 5028 follow:]

VI

99TH CONGRESS
1ST SESSION

S. 230

For the relief of the city of Dickinson, North Dakota.

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 21), 1985

Mr. BURDICK introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

For the relief of the city of Dickinson, North Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding title II of the Reclamation Authorization Act of 1975, the city of Dickinson, North Dakota, is forgiven all obligations incurred by such city under the contract (numbered 9-07-60-WR052) entered into with the Secretary of the Interior or his delegatee.

(b) The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, shall have the sole responsibility for the operation, maintenance, and administration of any facilities which were constructed under title II of the Reclamation Authorization Act of 1975 and for which the repayment of costs incurrred in connection therewith was forgiven under subsection (a).

○

99TH CONGRESS
1ST SESSION

S. 252

To authorize the Secretary of the Interior to construct, operate, and maintain the Lake Andes-Wagner Unit, South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, South Dakota.

IN THE SENATE OF THE UNITED STATES

JANUARY 22 (legislative day, JANUARY 21), 1985

Mr. ABDNOR introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize the Secretary of the Interior to construct, operate, and maintain the Lake Andes-Wagner Unit, South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, South Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, acting pursuant to the Federal Reclamation laws (Acts of June 17, 1902, 32 Stat. 388 and Acts amendatory thereof and supplemental thereto), is authorized to construct, operate, and maintain the Lake Andes-Wagner Unit, South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, South Dakota, substantially in accordance with the Lake Andes-Wagner Unit Report and draft environmental statement, for the purpose of providing irrigation water, conserving fish and wildlife, and providing other beneficial uses for approximately forty-five thousand acres of land. The principal features of the project include a main pumping plant located on Lake Francis Case, relift plants, a main canal system, and a drainage system. The project will also include measures to mitigate for project caused wildlife habitat impacts.

SEC. 2. The Lake Andes-Wagner Unit shall be integrated physically and financially with the other Federal works constructed under the comprehensive plan approved by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 887, 891), as amended and supplemented. Repayment contracts for the return of construction costs allocated to irrigation will be based on the water user's ability to repay as determined by the Secretary of the Interior; and the terms of such contracts shall not exceed forty years following the permissible development period. A portion of the reimbursable costs for irrigation service to Indian-owned lands will be indefinitely deferred under the Leavitt Act authority. Reimbursable costs associated with conservation and development of fish and wildlife resources in connection with the Lake Andes-Wagner Unit shall be in accordance with the provisions of the Federal Water Projects Recreation Act (79 Stat. 213), as amended by section 77 of Public Law 93-251.

SEC. 3. There is hereby authorized to be appropriated for construction of the Lake Andes-Wagner Unit the sum of $155,110,000 (indexed to January 1984 price level) plus or minus such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved and, in addition thereto, such sums as may be required for operation and maintenance of the works of said area.

○

II

99TH CONGRESS
1ST SESSION

S. 1704

To authorize an increase in the appropriation ceiling for the North Loup division, Pick-Sloan Missouri Basin Program, Nebraska.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25 (legislative day, SEPTEMBER 23), 1985

Mr. MCCLURE (by request) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize an increase in the appropriation ceiling for the North Loup division, Pick-Sloan Missouri Basin Program, Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 507 of Public Law 92–514 (86 Stat. 970) is amended by striking out "$79,500,000 (based upon January 1972 prices)" and inserting in lieu thereof "$333,865,000 (based upon July 1984 prices)".

○

II

99TH CONGRESS
2D SESSION

H. R. 5028

IN THE SENATE OF THE UNITED STATES

JULY 14, 1986

Received; read twice and referred to the Committee on Energy and Natural Resources

---

AN ACT

Entitled the "Lower Colorado Water Supply Act".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION.

(a) The Secretary of the Interior is authorized to construct, operate, and maintain the Lower Colorado Water Supply Project, California, in order to supply water for domestic, municipal, industrial, and recreational purposes only. Such project shall be constructed substantially in accordance with the plans set forth in the document entitled

"Lower Colorado Water Supply Study, California" (December 1985): *Provided,* That the Secretary is prohibited from constructing facilities with a total capacity in excess of ten thousand acre-feet per annum under authority of this Act.

(b)(1) The Secretary is further authorized to enter into exchange contracts and take such actions as the Secretary deems appropriate to facilitate a water exchange agreement between non-Federal interests and those interests designated in section 2(b) of this Act in which such non-Federal interests agree to exchange a portion of their rights to divert water from the Colorado River for an equivalent quantity and quality of groundwater to be withdrawn from a well field located in the Sand Hills area, Imperial County, California.

(2) The Secretary is prohibited from executing any contracts under the authority of subsection (b)(1) of this section until such contracts have been submitted to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate and ninety calendar days have elapsed.

SEC. 2. REPAYMENT OF COSTS.

(a) The Secretary is prohibited from obligating or expending any of the funds authorized to be appropriated by section 3 of this Act until—

(1) a study has been completed, and submitted to the appropriate committees of the Congress, allocating

among the Federal and non-Federal beneficiaires the capital costs and the costs of operating, maintaining, and replacing the project authorized by section 1 of this Act;

(2) the Secretary has entered into a contract or contracts with non-Federal interests for repayment of the capital costs, plus interest, allocated to non-Federal interests for municipal and industrial purposes as identified in the cost allocation study prepared under subsection (a)(1): *Provided,* That the terms and provisions of such contracts and repayment shall be governed by the provisions of the Water Supply Act of 1958 which were in effect on January 1, 1986; and

(3) the Secretary has entered into a contract or contracts with non-Federal interests for payment of 100 per centum of the costs allocated to such non-Federal interests for the operation, maintenance, and replacement of the project.

(b) Any contracts executed by the Secretary to fulfill the requirements of subsections (a)(2) and (a)(3) of this section must be with persons, or Federal or non-Federal governmental entities whose lands or interests in lands are located adjacent to the Colorado River in the State of California who do not hold rights to Colorado River water or whose rights are insufficient to meet their present or anticipated future needs, as determined by the Secretary. Such persons, or Federal or non-Federal governmental entities shall include the city of Needles, the town of Winterhaven, and other domestic, municipal, industrial, and recreational water users along the Colorado River in the State of California.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for the construction of the Lower Colorado Water Supply Project through September 30, 1991, the sum of $1,800,000, such sums to remain available until expended. There is further authorized to be appropriated for each of the fiscal years through September 30, 1991, the sum of $100,000 for the operation, maintenance, and replacement of that portion of the project used to supply municipal, industrial, or recreational water supplies for lands managed by the Federal Government. No funds are authorized to be appropriated for payment of the operation, maintenance, or replacement costs allocated to non-Federal beneficiaries as determined by the study undertaken under authority of section 2(a)(1).

Passed the House of Representatives June 24, 1986.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

Pete Wilson

STATEMENT OF THE HONORABLE PETE WILSON
SENATOR FROM CALIFORNIA
BEFORE THE SUBCOMMITTEE ON WATER AND POWER
JULY 21, 1986

Mr. Chairman, and members of this distinguished subcommittee, I am here today to express my support for H.R. 5028, the "Lower Colorado Water Supply Act." This much needed bill will resolve some of the water rights problems that have lingered along the Colorado River in California over the past twenty years.

To summarize an exceedingly complex arrangement, it can be said that the rights of the Colorado River Basin states and individual entities to the Colorado River water are governed by documents collectively referred to as the "Law of the River." The principal components of the "Law" -- which in part established California's apportionment of river water -- are the Colorado River Compact of 1922 and the 1964 U.S. Supreme Court decision in *Arizona* v. *California*.

The Colorado River Compact divided the Colorado River Basin into the Upper Basin and the Lower Basin, apportioning 7.5 million acre-feet annually to the lower basin states of Nevada, California and Arizona. The compact did not, however, apportion water among the states. It wasn't until the Arizona v. California decision in 1964 that water among the lower basin states was apportioned. However, one problem with this division of water is that long-established priorities and rights among California users collectively total up to more than the river water apportioned to California in this landmark Supreme Court case.

As a result, we have a situation in which a number of small water users who have no entitlement to Colorado River water, including the City of Needles and the town of Winterhaven, have been forced to illegally use Colorado River water. Confronted with this dilemma, studies have been underway since 1980 to determine the best method for meeting the needs of these people within the framework of the various laws and court decisions that apply. This bill, which represents the culmination of these studies, proposes to use seepage from the All American Canal as a water source for these users who have no other resource.

The project authorized by this bill would pump groundwater seepage from the All American Canal and return it to the canal for delivery to Imperial Irrigation District in exchange for Needles, Winterhaven and other affected water users taking an equivalent amount of water from the Colorado. These water users would, in turn, reimburse the United States, in accordance with the Water Supply Act of 1958, for their allocated share of the capital costs, plus interest, together with annual operation and maintenance costs of the new groundwater wells.

Mr. Chairman, there appears to be no practical alternative to the approach outlined in this bill. This area of the Colorado River Basin is among the driest and hottest desert regions in the world. Water users in the area are primarily low-income individuals who lack the means to finance an alternative water supply system. This bill will prevent these people from being forced out of their homes as California users from the Colorado are cut back and the Central Arizona Project moves toward utilizing its full allocation.

I urge your favorable consideration of this bill.

Senator MURKOWSKI. First I will call on my colleagues, some of whom are with us now. First is the Honorable Senator James Exon.

Jim, you may proceed. I see Senator Mark Andrews is also with us, and Ed Zorinsky. Senator Zorinsky, if you would like to come and join at the witness table, then you may proceed with your opening statements and I assume, Senator Exon, you got there first so why do you not start in.

STATEMENT OF HON. J. JAMES EXON, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator EXON. Mr. Chairman, thank you very much.

I am delighted to be here. Thank you for considering S. 1704 this morning. I am going to be brief and will not take 5 minutes.

I did not know, but I was keenly interested in the fact that you are also taking up consideration today of the Lake Andes-Wagner project in South Dakota. I was also pleased to note that the chairman was in Wagner, SD. I did not know that. He will be surprised to know that that is my home country. I was born and raised in Charles Mix County. Wagner is adjacent to the county seat of Charles Mix County, which is Lake Andes.

My grandfather homesteaded in Charles Mix County way back in 1881, so my roots are very deep in that area, and I am very pleased to see that you are also considering marking up that bill today.

Mr. Chairman, it is a pleasure to be before your committee to express my support for S. 1704. As you know, timely passage of this legislation is essential in the construction of the North Loup project, and if it is to be completed without costly delays.

Just recently on July 4 I had the honor of assisting with the dedication of the Calamus Dam and Reservoir, which is the central feature of the North Loup project. I was genuinely impressed with the progress that has been made to date. The completed project will be an even more impressive and integral part, in addition to the Pick-Sloan Program which has proven its worth in flood control, irrigation, hydroelectric generation, navigation, recreation, and fish and wildlife benefits.

Mr. Chairman, Dale Williamson who is here representing the Nebraska State government will be testifying later on today and will fill you in on all of the details of this program. Mr. Williamson is uniquely qualified in this area and is recognized throughout Nebraska as the person with the most particular expertise on this program in particular, and water resources programs in general.

In this era of strained Federal budgets we cannot take lightly any measure which allows increased exposure to the Federal checkbook. However, in this case I am convinced that the cost increases which make this legislation necessary are entirely justifiable. They stem largely from the safety consideration which came to light after the Teton Dam disaster, and an increase in the cost of construction materials.

This adjustment in the cost ceiling is necessary to complete several sections of the project, including the Davis Creek Dam and numerous irrigation canals. If the cost ceiling of this project is not raised, construction will have to stop by the end of the 1987 construction season. What we cannot afford is a half-built project which would stand as a monument to Congress' lack of faith with those who are counting on this project as it was envisioned when first authorized back in 1972.

Not funding this project to completion would be the most wasteful action that the Congress could take with regard to the taxpayers' funds. It would be tantamount to building a house and then not putting a roof on it. No one who is reasonably fiscally responsible would or could recommend such action.

Mr. Chairman, this measure is strongly supported by the Nebraskans in the area of the North Loup project, the congressional delegation as a whole, by the administration, and certainly by this Senator.

I stand ready to assist you in passage of this important measure, and ask that it receive your timely and favorable consideration.

Mr. Chairman, I thank you and the other distinguished members of the subcommittee very much for your time.

Senator **Murkowski**. Thank you, Senator Exon. I was particularly interested in your comments on your boyhood in that area of South Dakota that I had an opportunity to frequent last fall. After visiting it, I cannot imagine why anyone would leave.

Senator **Exon**. Well, I wanted to be elected Governor of Nebraska, so I had to go down to Nebraska. [Laughter.]

Senator **Murkowski**. Obviously that was a higher calling than pheasant hunting.

Senator **Exon**. I would simply say to you, Mr. Chairman, that Wagner, SD, is a wonderful community. I have so many friends there from my boyhood days. I remember the time when the Lake Andes athletic teams used to go down and just beat the devil out of Wagner, in those days of yesteryear. I do not know how it is going now. [Laughter.]

Senator **Ford**. You know, Mr. Chairman, it is surprising that he can remember that far back. [Laughter.]

Senator **Exon**. I thank my friend from Kentucky for his wonderful remarks. Thank you.

Senator **Murkowski**. I think it would be inappropriate for a younger Senator to comment on the memory of my colleagues. Thank you very much, Senator.

Our next witness will be Senator Zorinsky. Senator Zorinsky, good morning. We look forward to your statement.

STATEMENT OF HON. EDWARD ZORINSKY, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator **Zorinsky**. Thank you, Mr. Chairman.

It is a pleasure to appear before the Water and Power Subcommittee today to let you know of my strong support for S. 1704, the bill to authorize an increase in the appropriation limit for the North Loup project in Nebraska. Let me begin by thanking you for arranging to hold this hearing to develop the record in favor of the bill.

I know that the members of the subcommittee are aware of the facts surrounding the need to increase the authorization ceiling for the North Loup project.

When the project was reauthorized in 1972, the spending limit was set at $79.5 million based on January 1972 prices. That figure translates into $193.17 million based in July 1984 price levels. However, current estimated Federal money required to finish the project also based on July 1984 dollars is $333.865 million, a difference of roughly $140 million.

Mr. Chairman, many things have changed since the project was reauthorized in 1972. Most of the changes were made in the design of the North Loup and were related to information that we gained as a result of the Teton Dam disaster. Thus, the increased cost may be attributed to design standard changes aimed at improving safety. The Department of the Interior reports that the cost increases are due, and I quote them now—

> To revised inflow design floods, unavailability of various construction materials, updating concepts based on more complete design data, and a change in the makeup of the project to optimize service and facilitate operation and maintenance. Also, miscellaneous additional costs associated with cultural resources, environmental and safety considerations, and other related factors were not fully conceived or anticipated in the 1969 estimate.

So it is my judgment that the increases are justified and necessary in light of updated data and a reasonable consequence of those circumstances.

During the recent July Fourth recess, as my colleague pointed out, we both had the opportunity to attend the dedication of an integral part of the North Loup project, the Calamus Dam and Reservoir, which is now finished and serving the needs of the local residents who have waited so long and have worked so hard to make the reservoir a reality. I was able to speak with many people in the area about the North Loup project.

I came back to Washington with two very strong impressions from my visit. First, I was very impressed by the strong degree of support and appreciation for the facilities now in place. The level of satisfaction expressed by the local citizens for the action of their government in providing the badly needed investment in central Nebraska's future is really something to behold.

Second, I was equally impressed by their desire to see the entire project through to its conclusion. The people of central Nebraska want and need this project completed more than ever, now that they see tangible evidence of the benefits it will bring to their region.

So, Mr. Chairman, we do not serve the needs of our constituents when we adopt legislation to proceed with a project and fail to follow through. Half-built projects not only fail to meet the previously prescribed requirements for successful development; they also tend to erode public confidence in our ability to listen to local opinions, develop ideas, and place those ideas into action.

This is especially true when the reasons for scaling down the scope of the project are due to indispensible factors like safety. I think we should see the North Loup division through to its conclusion and provide the funds necessary to meet this goal.

Mr. Chairman, I applaud your recognition of this matter as a problem which deserves the quick attention of your subcommittee. As it stands now, the authorization limit has or soon will be reached, causing a major delay in the progress on the project unless action is taken soon.

I am glad to note the strong support for this action demonstrated by State and local interests, the administration, and the Nebraska congressional delegation. I hope that S. 1704 can be moved through the legislative process expeditiously.

Once again, Mr. Chairman, I thank you for your gracious efforts to help in this regard and, as always, I look forward to working with you to see that the needs of water users in my State are met.

Thank you, Mr. Chairman.

Senator MURKOWSKI. Thank you very much, Senator Zorinsky. I assume that the other Senators that are speaking, or Congressmen, are speaking on other bills before the subcommittee?

Mr. BROWN. Yes, sir.

Senator MURKOWSKI. I am wondering, gentlemen, it is my understanding that it is going to take about $140 million addition to finish this project. This project was started in 1976, and is about 45 percent completed now. Is it 45 percent functional now?

Senator ZORINSKY. Fifty-two, is it not?

Senator MURKOWSKI. My notes say 45 percent. I obviously do not know.

Senator EXON. I would think probably it depends on what base you are using. The project is in the area of 50 percent completed. I reviewed in great detail, Mr. Chairman, why the original estimate was low. It was low essentially, as both Senator Zorinsky and I have said, and to require changes with regard to the safety of the dam itself as a result of the Teton Dam disaster. So most of the increased costs that we have here, other than unanticipated inflation, is brought about by the mandates and dictates for higher safety than was built into this project in its original conception.

Senator MURKOWSKI. You are satisfied, though, that $140 million will complete it? Are you reasonably satisfied?

Senator EXON. I have asked that question over and over again, and I have been assured that the $140 million will do it. So those who are making those estimates are of good standing, and I believe that the person who could supply some of the details on that to justify that $140 million is all that we are going to need would be Dale Williamson that I mentioned earlier in my testimony.

Senator ZORINSKY. Mr. Chairman.

Senator MURKOWSKI. Senator Zorinsky.

Senator ZORINSKY. I am told that the Calamus Dam and Reservoir is the retention project for the holding of the water, and that is about 52 percent of the entire project. Now to complete the project, what is left is the canals to deliver the water to the irrigation projects. It would be sort of like developing a Prudhoe oil field and then waiting to have the pipeline to deliver the oil. We are waiting for the canals to deliver the water to the irrigation process.

Senator EXON. And if we do not complete this, Mr. Chairman, essentially we are going to have a very, very beautiful lake and a good recreational area, but no water. The main reason for this project was to provide irrigation water.

Senator MURKOWSKI. I certainly understand.

I thank you both for your testimony this morning and wish you a good day.

We have Senator Mark Andrews of North Dakota, and Senator Burdick.

Do you have any questions, Senator Ford?

Senator **Ford**. No. I am inclined to support what they are suggesting.

Senator **Murkowski**. Just inclined?

Senator **Ford**. Just inclined.

Senator **Murkowski**. Well, that is like being lukewarm.

Senator **Ford**. I do not know. Just tilt me toward Tillie. [Laughter.]

Senator **Murkowski**. Senator Burdick will be right back. I would suggest that we proceed with the testimony. Here he comes.

We have both Senator Andrews and Senator Burdick, and you may proceed as you see fit, gentlemen.

Senator **Burdick**. Mr. Chairman.

Senator **Murkowski**. Please proceed.

STATEMENT OF HON. QUENTIN N. BURDICK, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator **Burdick**. I would like to thank Senators Murkowski and Bradley for their efforts in assisting the city of Dickinson and myself on this contract dispute.

Last September you kindly sent a professional committee staff member to attend a meeting in my Fargo office. The purpose of the meeting was to reach a compromise between the city and the Bureau of Reclamation. It was my impression that both parties were comfortable with the agreement reached in principle.

As indicated in my letter requesting this hearing on S. 230, it is my intent for the subcommittee to consider the agreement as drafted in amendment form rather than the original bill. I have discussed this issue with the city. Its elected representatives prefer a legislative compromise instead of presenting a court claim when the Federal Government sues next January for nonpayment.

From hindsight one can clearly see that the bascule gates remedy was far too costly and inappropriate for such a northern climate. From the start, Dickinson had many reservations about the safety protection against failure in mechanical features of the bascule gates. However, because of concerns for an immediate source of water supply during drought years, the city relied on the Bureau against better judgment. After a certain point the city could not remove itself from the contract nor afford to seek an alternative remedy. It became stuck with a project more than three times the original dollar cost.

The city realized its worst fears in February of 1982 when the bascule gate allowed a sudden release of ice and water into the Heart River. Correction of the design error alone is about $800,000.

The city had been very persistent in seeking a remedy. They are correct in assuming that the Bureau of Reclamation is partially responsible for the unforeseen cost and for recommendation and design of a water control structure unsuitable for the upper Midwest.

I would urge the subcommittee to accept the compromise. The compromise was reached by individuals who were most directly involved over the past 7 years. I think that their perception of the equities should carry great weight.

Thank you, Mr. Chairman, and it has been my pleasure to introduce and to recognize the mayor of the city and his associates here this morning.

[Senator Burdick submitted the following:]

029910.596 S.L.C.

AMENDMENT NO. ___ Calendar No. ___

Purpose: To modify the terms of the negotiated compromise.

IN THE SENATE OF THE UNITED STATES--99th Cong., 1st Sess.

S. 230

For the relief of the city of Dickinson, North Dakota.

Referred to the Committee on _____________________________ and ordered to be printed

Ordered to lie on the table and to be printed

Amendment In the Nature of a Substitute intended to be proposed by Mr. Burdick

Viz:

Strike all after the enacting clause and insert in lieu thereof the following:

That (a) notwithstanding title II of the Reclamation Authorization Act of 1975 (Public Law 94-228), the city of Dickinson, North Dakota, is forgiven all obligations incurred by such city under the contract (numbered 9-07-60-WR052) entered into with the Secretary of the Interior or his delegatee.

(b)(1) The Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation, is authorized to enter into a new repayment contract with the City of Dickinson the terms of which shall entitle the City of Dickinson to water supply benefits provided by the bascule gate project authorized by title II of the Reclamation

Authorization Act of 1975 in consideration for repayment of the costs of the bascule gate project as provided in paragraph (2).

(2) Repayment terms of the new contract shall provide for--

(A) repayment by the City of Dickinson of the capital cost of the bascule gate project of $1,540,000.00 over a period of 40 years at an interest rate of 7.21% per annum; and

(B) payment of the annual operation, maintenance, and replacement costs of the project facilities.

Senator MURKOWSKI. Thank you very much. We do recognize the mayor and the other principals, and thank you, Senator Burdick. It is nice to see you on the Republican side of the rostrum. Senator Ford occasionally sits over there, but he has not been over there lately.

Senator FORD. Name one time. [Laughter.]

Senator MURKOWSKI. They do not have ashtrays over there unless Pete Domenici is around. [Laughter.]

Senator FORD. Beginning in January, that will be the majority side.

Senator MURKOWSKI. I do not know what you have been smoking, but——

[Laughter.]

Senator MURKOWSKI [continuing]. Rather than pursue that conversation, I think we had better get back to the witness who I think shares my thoughts on the majority in the next session, Senator Mark Andrews——

Senator FORD. He shares his thoughts on the election.

Senator MURKOWSKI [continuing]. Of North Dakota. Senator Andrews.

STATEMENT OF HON. MARK ANDREWS, A U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator ANDREWS. Absolutely.

Mr. Chairman, and members of the committee, I am delighted to be here today as a cosponsor of S. 230 and in support of the amendment to establish a new repayment contract between the city of Dickinson, ND, and the Secretary of the Interior through the Commissioner of the Bureau of Reclamation. The amount of that contract, Mr. Chairman, should be $1,540,000 for a term of 40 years.

As was indicated, we have the mayor of Dickinson and key leaders from the Queen City of western North Dakota here who will testify and give you whatever information you need to back up that amendment.

You have heard from my colleague, Senator Burdick. You are going to hear from these officials of the city of Dickinson about several efforts to resolve a long-standing misunderstanding between the Bureau and the city of Dickinson. S. 250, might I point out, is the appropriate vehicle for the resolution of this long-standing dispute.

Drought and water shortage forced the city to accept an untried design and technique. Let me reemphasize to my colleagues, the city had no alternative but to accept this untried design and technique. They were in a position of having to re-refine their own sewerage. That is the only way they could get an adequate source of water was to recycle water out of that lagoon.

Dickinson is now being threatened with additional penalties resulting from inflation, increased interest rates, design correction, cost overrun, and other problems associated with the bascule gates trial that they participated in not exactly at their own choice.

The city is now being asked to repay costs incurred for design error on the part of the Federal Government. Not design error, Mr. Chairman, on the part of the city of Dickinson or the officials of that city, but on the part of the Bureau of Reclamation and modifications to correct that error.

The total requested repayment is double the initial estimate. Might I point out, Mr. Chairman and members of the committee also, that this whole project has gone through a gestation period of first two gates, and then one gate, and then a bubbler, and then a log and rope boom, all kinds of different little gadgets and gimmicks put in by the Bureau of Reclamation.

The legal wrangling between the parties has gone unresolved. Mediation was accomplished, accepted by the city, rejected by the Bureau of Reclamation. It is time to put an end to this unnecessary squabbling and today, Mr. Chairman, we have the legislative vehicle to accomplish this end.

Let me point out—and the Senator from Kentucky and the Senator from Alaska know so well of the small towns that we have in North Dakota. Our small cities, Mr. Chairman, simply cannot afford to pay for the mistakes to pay for the experimentation in this case of this Bureau of Reclamation. We are willing to pay what is fair and what is equitable, but our city simply cannot afford to pay kited figures brought about because of design changes and then the inflationary growth that came about because of the delay in completion of the project because of those very design changes.

Our solution is a realistic and practical one reflecting the early estimates and the ability of the city to pay its fair share. The Bureau recovers $1,540,000 at a 40-year repayment schedule at 7.21-percent interest. The city assumes operational, maintenance, and replacement costs estimated to be $20,000 a year. Both parties compromise. Fairness is served, and the differences are laid to rest.

In equity, Mr. Chairman, I urge your approval of S. 230 as amended.

Senator **Murkowski**. I wonder, Senator Andrews, if you could give an explanation of why the gates do not work properly? Has there been an acknowledgement from the Bureau of Reclamation that it does not work properly?

Senator **Andrews**. Well, the Bureau of Reclamation has to admit it does not work properly because when we had a flood several years ago they simply failed to operate properly. The bascule gate concept is a new one. It is an experimental one. And as the people from the city will testify, they started out with two gates, then with one gate, then with a bubbler to keep the gates from freezing—and mind you, when the runoff comes in North Dakota, that is a harsh climate, Mr. Chairman, much like Alaska. There is ice on that river, and the ice louses up, to put it mildly, the operation of these bascule gates.

They simply were not designed to function properly, and those changes have had to be made at great cost, but through no fault whatsoever of the people of Dickinson, ND.

Senator **Murkowski**. You feel, had the gates been properly installed or designed appropriately, it would have cost less than the escalated current cost of $3.2 million? So the justification for this is simply the higher costs associated with——

Senator **Andrews**. Absolutely.

Senator MURKOWSKI [continuing]. Their bad design, and you could have gotten something adequate had they gone back to a proven design, and that is what you are hoping to accomplish?

Senator ANDREWS. You are absolutely on target. The $1,540,000 is an accurate recommendation or reconciliation of the price that was anticipated when the city got into the contract with the Federal Government, plus inflationary factors since then.

In fact, the original price was some $800,000, as I recall, and the $1.5 million is double the original estimated price. But in equity, and in the fact that we have had inflation and all of the rest, the city is willing—not happy about it, but willing to absorb this. But it simply cannot afford to pay for the experimentation that did not work out.

Senator MURKOWSKI. In its current state now, and I am told it operates but not as well as it should, or words to that effect, who will be responsible for the operation?

Senator ANDREWS. The city of Dickinson will be responsible for the operation and maintenance, and it is estimated to cost some $20,000 a year, but they will do that with their own in-house ability. The design is not as good as it could have been. Fixes have been made along the line, and they feel confident that they can operate it and make it work, and they intend to do it.

Senator MURKOWSKI. They are willing to assume the responsibility and free the Government of any liability associated with the design malfunction or operation. Is that correct?

Senator ANDREWS. Up to—well, the operation and maintenance up to $20,000. If something unforeseen comes along that no one has anticipated, but they have run this through floods and through icing and all of the rest, and they feel that the $20,000 is a realistic figure. Now if there are some great flaws that were undiscovered and the cost of operation and maintenance in 1 year comes far greater than the $20,000—which incidentally is 2½ times the original anticipated cost of operation and maintenance—but if it exceeds that, of course then again there is a design flaw that has not been anticipated.

As one who supported the warranty concept in the Defense Department, I was supported by the chairman of this committee in that, all we are doing is trying to get a little warranty out of the Bureau of Reclamation on behalf of this city in western North Dakota.

Senator MURKOWSKI. I understand. Sometimes you wonder if you would not have been better off to put it out for bid, have a bond, and then you would be able to have some recourse.

Senator ANDREWS. I think it would have been much better, Mr. Chairman. Unfortunately, it was not done that way. When the Bureau of Reclamation found the people to do the work and the major corporation did the work, you would almost think that looking back over other records they know that there is indeed and in fact ice and snow in this western North Dakota location that has to be contended with.

Senator MURKOWSKI. One would think so.

Senator Ford.

Senator FORD. I am just—it appears that Senator Burdick and Senator Andrews' proposal here is reasonable for the city. There are a couple of things that bother me just a little bit. I am sure you can answer them.

Of course the city is being asked to pay, or is willing to pay 2½ times their original agreement. I think the original agreement, as I read it, would have cost them about $681,000, and now it is $1,540,000. So that is basically 2½ times the original agreement.

Of course you used the word "estimated," and when you get the bureaucrats to estimate something you are in real trouble, but you say the $20,000 of the estimated cost of operation and maintenance. So I do not know whether that is a percentage or just a top figure.

Is that a top figure the city will have to pay?

Senator Andrews. That is the Bureau's figure.

Senator Ford. Well, you cannot rely on that if you go back to the original agreement.

Senator Andrews. The original figure given to the city was in the neighborhood of $6,000 a year when it was started. So what they are doing is they are taking the Bureau figure and they are saying, we will do the operation and maintenance hoping that it can come in at considerably less than that, but saying since the Bureau now says with the gates in place operating as they have seen it operate, that the max would be $20,000, they say, OK, fine. We will accept up to $20,000. If it goes over that, then there is another design flaw and we have to be compensated for that.

Senator Ford. Well, it appears that it is what is typical, the city is being required to pay for the Government's mistakes. That bothers me a great deal that we are found in that sort of position, or the city is found in that position. So I agree with you and Senator Burdick.

There is one other item——

Senator Andrews. Senator, we would be very happy if the committee in its wisdom wanted to amend our amendment down to $690,000, which was the original estimate——

Senator Ford. I know, but I am saying——

Senator Andrews [continuing]. And if you are moving in that direction——

Senator Ford. Oh, I understand that. But what I am saying is the city is being put upon——

Senator Andrews. You're darned right.

Senator Ford [continuing]. Because of the Government's mistakes.

Senator Andrews. Sure.

Senator Ford. That is the story of our lives around here.

Senator Andrews. That is right.

Senator Ford. And it is unfortunate. But as I read the background here, you really have more water than you originally estimated; that you had about 3,500 acre-feet, now you have over 9,000, almost 10,000 acre-feet, according to the background information, so you are about triple the amount of water that you would have under your original agreement. Is that correct? You have got more to supply than you had originally by three times?

Senator Murkowski. Is that enough for a coal slurry to Kentucky?

Senator Ford. Not hardly. That was not enough water to get the coal out of the——

Senator **Andrews**. It is about 1,100 acre-feet under the first contract. They have got about 2,000 acre-feet now, I am told, and they can give you or your staff, Senator, that technical information.

Senator **Ford**. The only thing I am going by is the background information we have here.

Senator **Andrews**. It has been raining out there, too, the last couple, 3 years, and it was not when we originally got into this, and it will not in the future because that is the history of North Dakota.

Senator **Ford**. It increased the useful storage capacity by 3,493 acre-feet to an active storage capacity of approximately 9,100 acre-feet. So you are picking up some.

Senator **Andrews**. That is right, and the city is willing to——

Senator **Ford**. I would like to amend this that the city's water cannot be used for a coal slurry pipeline. [Laughter.]

Senator **Andrews**. You know where I stand on that. You and I have fought together on that one for a long time.

Senator **Ford**. That is right. Long and hard, and probably longer than harder.

Senator **Murkowski**. Well, if we have to use our wisdom, we might be in trouble.

Senator **Andrews**. Let me assure you that not one drop of water from that reservoir will be used for a coal slurry pipeline.

Senator **Murkowski**. I am sorry I brought it up. [Laughter.]

Senator **Murkowski**. Senator Burdick, do you have any concluding comments on this proposed bill?

Senator **Burdick**. No. What my colleague has said is absolutely correct. This was a mistake in engineering judgment that left us with a bill and very little performance, and I think what has been said here is absolutely correct. There should be some adjustment to the city of Dickinson for their mistake.

Senator **Murkowski**. Thank you very much.

Senator **Andrews**. Thank you very much, Mr. Chairman.

Senator **Murkowski**. Senator Andrews, we wish you a good day.

Our next witnesses include Senator Pressler, Senator Abdnor, and I believe there are some introductions of members of the panel, but we will play it any way to accommodate our colleagues.

While they are getting organized, I cannot help but make an observation, Senator Ford. I do not know if this is true with you, but it seems like whenever I propose legislation for Alaska, we are all by ourselves. It is kind of interesting to reflect on this hearing as a package which involves Nebraska, and North Dakota, and South Dakota. Obviously in numbers there is strength, and I would certainly look for an opportunity if Kentucky and Alaska could join on something.

Senator **Ford**. We certainly can. But I would say to the distinguished chairman that Alaska has never fared too badly. They got a higher percentage on payment for interstate roads than the rest of the States. They are able to give all of their constituents rebates, or checks every year. Alaska has fared very well. Even though you find yourselves in a lonely position, the results are somewhat better than most others.

So I would not put up the flag of Alaska here today as being hard up.

Senator **Murkowski**. No, I was just extending a hand across to the State of Kentucky——

Senator **Ford**. I understand that——

Senator **Murkowski** [continuing]. In hopes that it might be encompassed in a warm and friendly heart.

Senator **Ford**. Well, my heart is——

Senator **Murkowski** [continuing]. Encompassed with some suspicion and doubt. [Laughter.]

Senator **Ford**. My heart is warm, and my barrel is full, Mr. Chairman. If you bring the dipper, we will have some fun. [Laughter.]

Senator **Murkowski**. Well, we will bring the dipper, and as you know, oil prices are on the decline, and there is a great deal of grief and despair. [Laughter.]

Senator **Murkowski**. So with that observation, why we will continue. We have a——

Senator **Ford**. May I just make a statement to the panel?

Senator **Murkowski**. You certainly may.

Senator **Ford**. If you lose your good humor around here, you are through.

So the chairman and I try to maintain the good humor. We are kind of crackerbarrel philosophers around here and enjoy each other and our camaraderie.

Senator **Murkowski**. Well, since you mentioned you have to maintain your good humor or you fail to be around, this being my election year I appreciate that reference of support.

Senator **Ford**. Well, you could reciprocate. [Laughter.]

Senator **Murkowski**. Well, I do not know whether you are understudying for the chairmanship here or not, but——

Senator **Ford**. No, you can be the ranking member next year. That would be fine with me.

Senator **Murkowski**. In view of the number of witnesses we have before us, and I do hope that you will stay with me for the balance of the morning, I would ask that Senator Pressler, if you would care to proceed with your opening statement, or Senator Abdnor, whichever.

STATEMENT OF HON. LARRY PRESSLER, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator **Pressler**. Mr. Chairman, I shall be very brief, and then I will have Jim introduce our witnesses. Really I want to yield most of my time to my colleagues from South Dakota and to Senator Abdnor who has taken the lead on this bill which I am cosponsoring.

As a cosponsor of S. 252 with Senator Abdnor, a bill to authorize the development of the Lake Andes-Wagner irrigation project, I want to thank this committee for holding this hearing. I also want to thank you for giving our other South Dakotans an opportunity to express our support.

As you are well aware, water development in South Dakota has a long history. In the 1940's South Dakota agreed to sacrifice over 500,000 acres of farmland for the construction of four Missouri

River mainstem dams. These dams have provided hydroelectric power, flood control, and navigation for downstream States.

In return for the sacrifices South Dakota made for the construction of the dams, the Federal Government made a commitment to South Dakota. That commitment was to provide water development in our State. Since coming to Congress over 10 years ago, I have continually fought for the development of South Dakota water projects.

We have had some success in this effort during that time with the development of the WEB project and the rehabilitation of the Belle Fourche irrigation project, but the Federal commitment to South Dakota has not been fulfilled. The authorization of the Lake Andes-Wagner irrigation project is an effort to obtain a partial fulfillment of the Federal commitment to South Dakota.

As you are well aware, the entire rural economy is very depressed. In an effort to make a profit, many farmers are exploring the possibility of raising alternative crops. In many instances, adequate moisture is critical to producing and developing a market for such crops. South Dakota has a potential to raise many alternative crops but irrigation is needed to guarantee adequate moisture. The development of alternative crops would benefit both farmers and neighboring rural communities.

The proposed Lake Andes-Wagner irrigation project would pump water from Lake Francis Case on the Missouri River to irrigate 45,000 acres of farmland in Charles Mix County in South Dakota. Irrigation water would be provided to private farmland as well as land owned by the Yankton Sioux Indian Tribe. The project would benefit the agricultural economy of the area and also help provide additional jobs.

The current unemployment rate for the population of the Yankton Sioux Indian Tribe is approximately 78 percent.

The local supporters of the project have made a major commitment to the development of the project. The Lake Andes-Wagner Irrigation District spent over $800,000 during the late 1970's to assess the potential for irrigation development in the area. The State of South Dakota and the entire South Dakota delegation have also supported the development of the project.

Mr. Chairman, I appreciate the time you have personally taken to conduct hearings here and in South Dakota, and I want to thank you and the other members of this committee for your consideration.

At this point, I yield to Senator Abdnor who will make the introductions.

Senator MURKOWSKI. Thank you, Senator Pressler.

Senator Abdnor.

STATEMENT OF HON. JAMES ABDNOR, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABDNOR. Thank you, Mr. Chairman, Senator Ford. I want you to know I greatly appreciate your agreeing to hold this hearing, Mr. Chairman, on the Lake Andes-Wagner irrigation project which, as Senator Pressler has said, we have both introduced.

I am also very happy that my friends in South Dakota could be here who really know this project to testify on it. It is certainly not their first trip here. I guess this legislation is synonymous with my coming to the House of Representatives. It has been around that long.

As Senator Pressler has so ably said, these people have made a strong commitment to this project long ago by putting in over $800,000 of their own funds to carry on part of the studies. It has been a long time coming. I think we have been back almost every year bringing this to attention, but now the studies are complete and we are very hopeful that the Bureau will agree this is a suitable and a good project.

To add to what Senator Pressler said, I guess this would be the first project constructed since the passage of the Pick-Sloan plan. The Belle Fourche project he mentioned was the second oldest project in the United States. That is not something new.

We think not only is it deserving, but it will stand on its own merits. It is a good project, as these people here today will be telling you, and I am just happy that we are able to bring such a delegation out.

To my right is our secretary of the department of water and natural resources, Mr. John Smith, from the State of South Dakota. Mr. Lyle Laberee is down on the end, who has been here many, many times, at the start of this program. Marc Goldhammer is to the left of Mr. Pressler. I guess he doesn't know hardly any other project. That is not true. I know of his interest in soil conservation and all.

Then there is Leo Holzbauer, and John Uecker, and Mr. Wiechman, and Mr. Crisman. So I guess I have named a few more than are here, but that is enough from me. I suppose we should have our secretary from South Dakota, the secretary of natural resources, speak.

Mr. SMITH. Thank you, Senator Abdnor, Senator Pressler.

Mr. Chairman, my name is John J. Smith. I am the secretary of water and natural resources——

Senator MURKOWSKI. Excuse me just a moment. I want to announce that we will accommodate out of order panel 2, which is what we have before us.

Senator Abdnor, Senator Pressler, I want to thank you for your opening statements citing the importance of this project. We have a panel 1, but in order to accommodate the situation it seems easier to let panel 2 continue, and then we will go on to panel 1.

I do want to advise you that I will invoke the 5-minute ruling, and I will be strict in that. I have asked Russ Brown, who has got a counter, assuming he can count to five, and I assume he can until proven otherwise, will indicate that.

Before we start in with the witnesses, I would ask Senator Ford or Senator Bradley who has joined us if they have any questions concerning S. 252 at this time.

Senator FORD. Let me just ask my colleagues one question, Senator Abdnor or Pressler, whoever.

It appears that rather than as projected the use would pay 100 percent reimbursable cost, but now we are seeing that there is apparently an agreement that the Midwest Electric Consumers Association would repay those costs beyond in the repayment capability of the water users.

Senator **Abdnor**. I want to refer that to Mr. Goldhammer.

Senator **Ford**. I didn't mean to get into the witnesses.

Senator **Abdnor**. Well, that is correct, but I thought if we were going to go into detail I was going to have him explain that to you.

Mr. **Goldhammer**. According to our planning report, the Bureau of Reclamation has within our planning report allowed us so that the farmer-irrigator only pays up to his ability to repay. So that leaves a difference, and our power people have agreed, according to the terms of the Pick-Sloan plan, that the power revenues will pick up the remaining balance that the farmer-irrigator does not have the ability to repay.

Senator **Ford**. How do you guage whether I have the ability to pay or not?

Mr. **Goldhammer**. Well, it goes according to the farmer's budget. You add up all the costs on your own particular farm, and the amount of money that you have left over—now the local district is responsible for the operation and maintenance of the total project, and that is significant because we do have to lift and pump the water up to a canal, a significant lift from the river. So we are paying, we are obligating the farmer-irrigator before he starts to approximately $24 on the operation and maintenance.

So that has to come out of the farmer's profit per acre, and what is left over above that after you deduct his expenses and a living allowance, that is his ability to repay.

Senator **Abdnor**. I should add that that was part of the original Pick-Sloan plan. That was not something that just got added.

Senator **Ford**. Well, Senator, does each farmer reveal his income tax return to show you whether he has any money left or not? I do not understand that. My farmers could not pay today if they wanted to. So basically most of them would be out unless they were a conglomerate or is a large farmer. We do not have the irrigation system out our way where we pay for it, and I am not trying to——

Senator **Abdnor**. I realize that.

Senator **Ford** [continuing]. Find out if you have an obligation to pay, and you do not have the ability to pay, you go bankrupt down my way. You just fold it up and they come get your farm. But this way you are going to shift the payment, if the farmer cannot pay, to a power association, which is the utility that generates it. Is that correct?

Senator **Abdnor**. Yes. It is the hydropower——

Senator **Ford**. So how do you determine whether I am able to pay or not?

Mr. **Goldhammer**. Well, it is just based on the costs that each farmer has, and then you figure out his profit and give him a reasonable living allowance. If he has got a profit, why then he has got an ability to pay. If he breaks even, why then the power revenues would have to pick up whatever that amount would be.

Senator **Ford**. How many farmers will be taking water from the——

Mr. **Goldhammer**. We are talking about approximately 250 family farmers. We are not talking about any kind of conglomerate or corporate thing like that.

Senator FORD. Do not feel like the Lone Ranger. We have family farms other places, too, that do not have irrigation ability. But I do not understand how you can tell me how much my obligation is based on some hypothetical figure.

Now it is either actual, or it is not. You have income averaging. Are you going to put the income averaging on the farmer this year so that he will be able—he made it last year and did not make it this year, so he puts on income averaging so you will not have to pay anything this year. So that way he is not making any money at all.

Mr. GOLDHAMMER. Well, Senator Ford, the best way I can answer that is that if you people see fit to give us an authorization, then the local irrigation district enters into a contract with the Bureau of Reclamation, a long-standing contract, 40 years probably, and that district will obligate itself to the operation and maintenance. At the time of that contract, why we will determine what our ability to repay is at the present farm cost and farm prices. And when we get through with that, we will have a contract that will probably stand five years, and then it will be reviewed after the development period.

Senator FORD. Well, the Bureau is here and they can describe the analysis, I understand, and I do not want to get into that. It just seems ironic that if you cannot pay, then some other unit is going to pick it up. That sounds pretty good to me.

Mr. GOLDHAMMER. Well, when the Pick-Sloan plan was designed, you know, the power revenues were set aside. Just for your information, the power revenues are paid already 14 years in advance. So there is considerable money available to make that repayment if it is necessary. That does not take the farmer off the hook, but because of the poor farm economy that we have right now, and I think that can be expressed all over the country, we just are going to have to probably use some power revenues to make up that difference until that economy turns around.

Senator FORD. Were the power revenues derived from bond issues, or how?

Mr. GOLDHAMMER. The power revenues are derived from the sale of the power on the Missouri mainstem dams.

Senator FORD. How did you get the money to build it?

Mr. GOLDHAMMER. The Federal Government built the mainstem dams, and it was for a number of purposes, for flood control for downstream States.

Senator FORD. You have got 14 years advance to pay?

Mr. GOLDHAMMER. The power revenues have paid already——

Senator FORD. Fourteen years in advance?

Mr. GOLDHAMMER [continuing]. Fourteen years in advance. The Western Area Power Administration [WPPA], we call it——

Senator FORD. We have the Southeast Power Administration.

Mr. GOLDHAMMER [continuing]. They sell power in our region to the various cooperatives and individual power companies, and that excess power that they sell, why that is where the power revenues accumulate from. But according to the terms of the Pick-Sloan plan, those power revenues were set aside to subsidize irrigation.

Senator FORD. I will get into it——

Senator ABDNOR. I do not want to drag it out, but there is just one thing I want to say to Senator Ford on this. When this was put in back when the Pick-Sloan Act was passed by this Congress, I think those who designed the program, those who initiated the legislation, those who voted for it in this Congress knew of the situation and also felt that South Dakota, while giving up 500,000 acres of land they were not particularly wanting to give up so that we could take care of flood control and hydropower, and far more of it goes to the other States than to my State, that this was one of the things we were going to receive. It was far more than this.

And 40 years later we are still looking around for it. I cannot tell you how it started, but I do know that was part of the proposal, and I have heard this story many times over long before I came to Congress. This was written right into the legislation, and maybe when the Bureau comes in they can——

Senator FORD. You mean these fellows have been making this trick for 20 years?

Senator ABDNOR. The bill has been in——

Senator MURKOWSKI. They are persistent.

Senator FORD. I do not understand how it could take you 20 years and you have not reached an agreement.

Senator ABDNOR. We have not built much in the last——

Senator FORD. I understand there is a bill similar to this that has been introduced in the House.

Senator ABDNOR. Right.

Senator FORD. By Congressman Daschle, and that they have not had a field hearing, and they will have a hearing probably this week in the House on the same piece of legislation.

Senator ABDNOR. Tomorrow.

Senator FORD. Tomorrow? OK, fine. Thank you. I did not mean to get into this, but there are always little unique things going on in other places, and people are getting in on all these. I have not been around here too very long. You have been at it for 20 years. So I am finding out how these little things happen, and I am trying to figure out ways I can do the same sort of thing for my people.

If the farmer cannot pay, then you have a power association pay for it. If not, you just let it pile up. So I am beginning to look at some of these various and sundry things that might be available for my State, and I intend to pursue those. I may not be here for 20 years, but I will pursue it.

Senator MURKOWSKI. Well, I am sure, Senator Ford, with your creativity that [laughter] something good for Kentucky will come out of this.

I think, though, that it is a point that is of significance since the Bureau of Reclamation did in its initial projections assume that the farm utilization for the water would be sufficient to reimburse the costs without assistance from power revenues, but now with the realization that times are tough, why it would seem quite likely that they would be looking for revenues from the power generation to amortize the investment.

Senator Bradley, we have 15 witnesses, and we are anxious to begin, but I do want to recognize you.

Senator BRADLEY. Thank you very much, Mr. Chairman.

I will be very brief, and I would like to direct the question to anyone on the panel.

Senator **Murkowski**. We have not had the witnesses yet.

Senator **Bradley**. Well, I will then address it to the two Senators as to their understanding.

Senator **Murkowski**. The only two we have had are the Senators.

Senator **Bradley**. The irrigation water will be used to irrigate approximately 45,000 acres. It says here, including 1,700 acres of the Yankton Sioux tribal lands. My question is, are the terms of the water made available to the tribal lands the same as the terms made available to anyone else in South Dakota who are users?

Mr. **Goldhammer**. Do you want me to answer that?

Senator **Abdnor**. Please.

Mr. **Goldhammer**. The tribal lands are included within the project area. The tribal lands, according to exempt—and my memory fails me now what we call it—the Levitt Act, the total cost of the Indian lands are exempt from repayment by the Levitt Act. So that there is no misunderstanding, the tribal lands would be subject to the same operation and maintenance costs, which is the cost for pumping water and maintaining the total system, the delivery system and pumping plant. That is how those tribal lands would be, that there would be no repayment required from the Indian Tribe according to the terms of the Levitt Act. I cannot recite the number of that and so forth, but I am sure you have probably heard of it before, and if you have not I am sure I can furnish you that information.

Senator **Bradley**. I thank you very much for your clarification.

Senator **Murkowski**. Thank you, Senator Bradley.

Senator **Abdnor**. Mr. Chairman, I am going to leave because I have a highway hearing upstairs that needs my attention.

Senator **Murkowski**. Senator Abdnor, I quite understand.

Senator **Abdnor**. I wish to thank you again for that hearing we had last fall, and I thank you very much.

Senator **Murkowski**. I enjoyed it, and I hope that we can come back, perhaps during pheasant season even, if that is possible.

Please proceed, Mr. Smith. Again, I would ask that those of you who are inclined to summarize your statements do so, otherwise we will blow the 5-minute whistle. Proceed.

STATEMENT OF JOHN J. SMITH, SECRETARY, DEPARTMENT OF WATER AND NATURAL RESOURCES, STATE OF SOUTH DAKOTA, PIERRE, SD

Mr. **Smith**. Thank you, Mr. Chairman.

I am here on behalf of Governor Janklow who could not be here today. He sends his regards. Despite recent events, he still maintains his sense of humor. That is not the reason he is not here.

We strongly support the Lake Andes-Wagner irrigation project. We have now supported it for several years. We have put our money where our mouth is, along with the local people. We have put up $800,000 of State money in addition to the $800,000 of local funding for the project. This represents around two-thirds of the total funding for the project study thus far.

We support it for several reasons. The first and most obvious of course is it will pump around $16 million per annum into the economy down in the Lake Andes-Wagner area. Perhaps more importantly it will stabilize the agricultural economy in that area. I think recent events in the Southeast illustrate the importance of this to an economy that suffers from the cyclical weather patterns.

We have recurrent drought events around every 5 to 10 years, in contrast to the Southeast recurrence interval of around 50 years.

Third, this project is, unlike a lot of water development projects that have been criticized in recent years, this project will enhance the recreation and wildlife environment in the project area. It will provide supplemental water for Lake Andes. It will provide for a fishery facility that the State of South Dakota greatly desires on Lake Francis Case, and it will fully mitigate the loss of native habitat currently in the project area.

Finally, the project will provide very badly needed jobs and an economic boost to an area of our State that is 20 percent native American, and which suffers a 78-percent unemployment rate among the native American population.

This is a good opportunity to utilize an existing and highly successful program of the Federal Government to provide a shot in the arm to that Indian community in the Charles Mix County area.

The principal reason, however, why we support the project is the people who are seated here with me today. These people have a vision for their community, a vision of providing for a more stable, more diverse economy for them and for the Indian citizens who live in Charles Mix County. In response I guess somewhat to Senator Ford's comments, their dream is but a natural continuation of a vision that Congress first realized back in the the 1940's with disastrous floods and droughts.

The Pick-Sloan Program has been a very, very beneficial program. It is one of the really great things that Congress has done for this Nation. We have participated in that program willingly. We believe the Pick-Sloan Program has been an excellent investment by the Congress and by the United States. We simply ask that you recognize this small increment of development for our State as a natural culmination of what you set out to do 40 years ago.

It is a good project. We urge you to support it. With that, I turn it over to the representatives of the project.

Thank you.

Senator Murkowski. Thank you very much, Mr. Smith.

The next witness will be in whatever order you choose, gentlemen.

STATEMENT OF LYLE LABEREE, MANAGER, SOUTHERN MISSOURI WATER DEVELOPMENT DISTRICT, LAKE ANDES, SD

Mr. Laberee. My name is Lyle Laberee, and Senator and the rest——

Senator Murkowski. Mr. Laberee, please proceed.

Mr. Laberee. In your discussion that you would like to be back there for pheasant hunting, I think the appropriate time was we could have a celebration if this project is authorized.

Senator Murkowski. That sounds fair enough. [Laughter.]

Mr. **Laberee**. My testimony has been submitted to the staff, and I am sure that will be part of the record——

Senator **Murkowski**. It will be entered into the record.

Mr. **Laberee** [continuing]. So I am going to make a few comments on the side away from my written testimony then.

I think a real important thing in getting this authorization and with these group of landowners here that have been down there working, and my board that I represent from southern Missouri, some of those members have been working 20 to 30 years to try and get a Pick-Sloan project authorized, that they have worked real diligently the last few years. They have made a commitment that they want to go back to the local people to give them an opportunity to decide whether we actually do have a project there. It relates to Senator Ford's question about that ability to repay, but these board members here are in a position that they have done about everything.

They have got their planning report completed. That is all a matter of record. What they need is authorization so they can take it to the local people. That does not mean that we are going to have a project. They are going to have to make the ultimate decision. So I think that is real important that this committee give this board an opportunity to do that.

As John Smith said, really the big thing is we want to try and reverse the trend of losing all of our farms and providing an opportunity for additional employment in the area. I have some startling figures here, but that will be part of the record.

The main thing is we want to reverse the trend. The Bureau's estimates that we are going to have $13 to $14 million of additional foreign income that can be used to create job opportunities in our area and make it a better place to live, work, and play.

Again, if you get this authorized, we will make sure that you have a place to hunt. Thank you.

[The prepared statement of Mr. Laberee follows:]

TESTIMONY ON S.252
BEFORE SUBCOMMITTEE ON WATER AND POWER
FOR HEARING ON TUESDAY, JULY 22, 1986

Mr. Chairman and Members of the Subcommittee:

My name is Lyle Laberee and I am Manager of the Southern Missouri Water Development District. The Southern Missouri Water Development District covers six full counties and part of a seventh county in South Central South Dakota.

The Southern Missouri Water Development District strongly supports the Planning Report and Final Enviromental Impact Statement. We are here today to urge this committee to recommend that congress authorize the Lake Andes-Wagner Irrigation Project as called for in S.252.

Members of my board have worked for over 20 years to get an irrigation project authorized as part of the Pick-Sloan Missouri Basin Program.

In 1935, South Dakota had 83,303 farms, in 1982 we had only 37,148. During the period of 1974 to 1982 the number of farms declined by 13.2 percent in South Dakota. In 1935, the average size of South Dakota farms was 445 acres, 1982 the average size was 1,179 acres.

Economists tell us that for every 10 farms lost we loose one business. We need S.252 passed to help reduce the trend of fewer farms and crippled small towns.

Authorization of this project will help the economy of not only Charles Mix County, but the whole state and even beyond the state boundries. Implement dealers, cattle feeders, seed and fertilizer dealers and other business places will all benefit.

Let me give you a few statistics for Charles Mix County to illustrate a declining economy and quality of life.

1. Population in 1930 was 16,703; by 1980 the population was 9,680 or a loss of 42 percent in a fifty year period.
2. From 1975 to 1982 the number of farm workers decreased by almost 34 percent.
3. From 1978 to 1982, farm income dropped by over 22 percent.
4. Median family income of $11,812 is 26 percent lower than the state figure and almost 40 percent lower than the National Income figure.
5. A total of 28.8 percent of the families are classified as being below the proverty level, and 50.2 percent are classified as either low or moderate income.
6. Nearly 21 percent of the population is 60 years or older.

The planning and Environmental Impact Statement prepared for the Lake Andes-Wagner Project extimates that between 13 and 14 million dollars of additional farm income could be produced each year from this project. This additional on-farm income would create new job opportunities for our rural residents.

I am also the Chairman of the Central Charles Mix Development Association. We have an overall goal of improving the business climate of the cities of Wagner and Lake Andes. We recently sent over 20 letters to prospective businesses that might consider setting up a processing plant in this area. We received seven responses. A couple of possible processing plants might be for making potato chips and also sugar beet processing. The success of any processing plant will depend upon adequate crops. Mother Nature often neglects us in July and August by not providing enough rain.

We need the Lake Andes-Wagner Project authorized, so we can be assured of a good crop each year. If rural South Dakota is to survive this Project needs to be authorized to make this a good place to live, work, and play. Thank you. I will be happy to answer any questions you may have.

Senator **Murkowski**. Thank you very much, Mr. Laberee.

The next gentleman is from Wagner Heights, SD, Mr. Goldhammer.

STATEMENT OF MARC GOLDHAMMER, MANAGER, LAKE ANDES-WAGNER WATER SYSTEMS, INC., WAGNER HEIGHTS, SD

Mr. **Goldhammer**. Good morning, Senator Murkowski, and staff. It is a pleasure to be here again and do a little joshing with you, talking about pheasant hunting and so forth. As Lyle said, if we get the project authorized, you can come out hunting. I'll tell you one better. If you don't authorize it, you can still come out hunting because we'll probably be coming back here hunting for you anyway. [Laughter.]

Senator **Murkowski**. That's fair enough. You know it is unlawful to have guns in the District of Columbia. [Laughter.]

That is why they probably made that law, some of you folks come looking for us. [Laughter.]

Mr. **Goldhammer**. Well, anyway, we are extremely interested in Senate bill 252 today which would authorize the project. In the last 10 years, the local people have done just about everything that they could do to develop a project, including a comprehensive private study for sprinkler irrigation.

In the past 3 years, local efforts along with the Bureau of Reclamation and the State of South Dakota centered around a smaller project. We now have what we call a compromise project which only contains 45,000 acres of the best land and the most feasible land to develop. This is about half of the acres we once envisioned would be irrigated within this project area.

The planning report and the final environmental statement is a matter of record, and it has been through the field hearings, and so I certainly do not want to spend any time at that unless the committee would have some questions yet in that regard.

I want to talk a little bit about the local up-front cost-share that we have spent to date, and how we envision our cost-share will work in the future. First of all, our local bond issue, the issue that was used to fund the comprehensive private study for sprinkler irrigation and to convince the Bureau of Reclamation that flood irrigation was outdated for an area like South Dakota, and the area around Wagner and Lake Andes.

That local bond issue is $1,093,000—and—well, almost $2 million when you get through with the interest and everything on that. Our State loan fund that we borrowed from the State of South Dakota is $550,000. So we have obligated $1.6 million already for the project.

The third part of our up-front cost-share hinges on receiving authorization of the project. The South Dakota Legislature has set aside $1.2 million of additional loan funds for the local district to be used for final design and preconstruction cost-share.

So our local cost-share, if we have an authorization, then could total $2,843,000. Plus we also have to pay interest to the State of South Dakota which would almost double the amount that we would have to repay to the State. This really rounds out our local projects cost-share proposal.

We believe this to be a very ambitious cost-share for the local district to assume, and we have always kept in mind the irrigators' ability to repay the debt.

I would also like to discuss a little bit since the passage of the Garrison bill here just a few weeks ago that the Lake Andes-Wagner project is vehemently opposed to any amendments to Senate bill 252 that would penalize the project irrigator for raising a so-called surplus crop.

We believe South Dakota and our local area has given much more wealth through the Pick-Sloan Act of 1944 than we can ever receive. The benefits to downstream States can be totaled in the billions of dollars without penalty. Further the cost of the project will be repaid in full according to the terms of the Pick-Sloan plan. No farmer-irrigator today could stand the handicap of a penalty such as was imposed on the irrigator of the Garrison project.

We maintain the rights of the Pick-Sloan plan, and we intend to build the Lake Andes-Wagner project with those commitments. I would just like to add one thing.

On July 26, 1952, my young family and I, along with some of our other relatives, stood at the observation area at Fort Randall Dam and we observed the last closing of the dam, where the Missouri River was nothing but a small stream, and the final dirt was placed in there and closed off that mighty Missouri, and the water was diverted around back through the concrete structure that was built by the Corps of Engineers.

We stood there that day, and of course we heard the words of many of the Senators and the Commissioner of the Bureau of Reclamation that day explaining how the Pick-Sloan plan was going to help us as local people to establish irrigation in our area, and it would help take care of the tremendous amount of relocation that the people had to do that had to live up and down the river bottoms of well over 112,000 acres in Charles Mix County.

We stood there, and my young wife and I and our inlaws and my parents, and we said, you know, today this closing of this earthen dam certainly has to affect our lives in a very significant way. That has been an awfully long time ago. Ever since that time, I have been interested in the Lake Andes-Wagner irrigation project. We have worked with everybody that we could work with trying to develop it.

We think that this is our final proposal. We have worked with the Bureau of Reclamation. We have compromised. We have got a 45,000 acre project. We think it is the best job that we can probably do within years to come, and we would certainly like to beg the mercy of the committee, if that is what it takes, to get an authorization so that our local board can negotiate a contract with the Bureau of Reclamation, bring it back to the local people, and we will see if we can afford to build the project and obligate ourselves to the operation and maintenance and whatever we can repay on the project we are willing to do.

As I tried to answer Senator Ford, I hope I answered properly. The power revenues were set aside according to the terms of the Pick-Sloan plan and are available with a 14-years' advance payment on those. Those power people have agreed that that money, that they are more than willing to use that money to assist in building the project, and we would certainly like to ask for the authorization at this time so we can proceed, and I do want to thank you very much.

[The prepared statement of Mr. Goldhammer follows:]

Testimony on S.252
Before Subcommittee on Water
and Power
For Hearing on Tues., July 22, 1986

My name is Marc Goldhammer, and I serve as manager for the Lake Andes-Wagner Water Systems, Inc.

We are here today to testify on behalf of Senate Bill 252, which would authorize the Lake Andes-Wagner Project as part of the Pick-Sloan Missouri Basin Program.

The past ten years the local people have done everything possible to develop the project, including a comprehensive private study for sprinkler irrigation.
The past three years local efforts, along with the Bureau of Reclamation and State of South Dakota centered around a smaller project. Our compromise project now contains only 45,000 acres of the best land and the most feasible to develop.
This is about half the acres we once envisioned would be irrigated within this project.

The Planning Report I and Final Environmental Statement has been scrutinized at the field hearings, and therefore, we shouldn't have to spend time on the report unless the committee has questions. The local up-front cost share to date includes the following:

(1)	Local Bond Issue -	$1,093,043	
(2)	State Loan Fund -	550,000	
	Total-to-date	$1,643,043	obligated for project.

The (3rd) part of our up-front cost share hinges on receiving an authorization for the project.

The South Dakota Legislature has set aside $1,200,000 in additional loan funds for the local District to be used for final design and pre-construction cost share. The local cost share could than total $2,843,043.00, plus the interest on the State loan funds which will almost double the amount to repay the State. This rounds out the local projects cost share proposal. We believe this to be a very ambitious cost share for the local District to assume, always keeping in mind the irrigators ability to re-pay the debt.

The Lake Andes-Wagner Project is vehemently opposed to any amendments to SB 252 that would penalize the project irrigator for raising a so called surplus crop. We believe South Dakota and our local area has given much more wealth through the Pick-Sloan Act of 1944, than we can ever receive. The benefits to down stream states can be totaled in the billions of dollars without penalty.

Further, the cost of the project will be repaid in full according to the terms of the Pick Sloan Plan. No farmer irrigator today could stand the handicap of penalty, such as was imposed on the irrigator of the Garrison Project. We maintain the rights of the Pick Sloan Plan and we intend to build the Lake Andes-Wagner Project with those committments.

We wish to thank the committee for hearing us today on the SB252 and will answer questions as you wish.

Senator MURKOWSKI. Thank you very much, Mr. Goldhammer. We appreciate your statement.

The next witness is Mr. Leo Holzbauer.

STATEMENT OF LEO HOLZBAUER, WAGNER, SD

Mr. HOLZBAUER. Good morning. I do appreciate your time that you are spending here with the committee on this proposal of this project.

My name is Holzbauer, and I am a family farmer and irrigator. My father and my family have been pumping from wells since 1957.

I can still hear my parents talking about the terrible floods where lives were lost and a terrific amount of property damage occurred in South Dakota, and also a number of downstream States before dams were constructed on our Missouri River.

At the same time, dad hated to see the thousands of acres of good river bottom land that was lost. The productivity that would have been taken off of this land was gone forever when the dams were constructed. At the same time, the Bureau of Reclamation promised the State of South Dakota the Pick-Sloan plan, that the water needed which was collected behind these large dams and the portion of the hydroelectric power revenue that these dams created would be spent back in the State of South Dakota for irrigation projects.

As a present irrigator I have been always intrigued by the quantity and the quality of stored river water in our backyard. The quality of this stored river water has been verified by the Bureau of Reclamation to be the very best available for irrigation.

I became interested in this 45,000-acre Lake Andes-Wagner proposal in 1982 when local interest discussed sponsoring a new Bureau of Reclamation study. Because of the need for quality water delivered to my land, I support this project proposal. The planning report provides adequate documentation that this is a feasible project.

Although the farm economy is going through the toughest of times, I believe we must do something to help ourselves. The project proposal offers numerous opportunities to the local community. With irrigation, traditional and special crops can be grown in volume so local processing would be a feasible alternative for our future.

The farmers must have a stable production in year-in/year-out to meet present expenses. Under the present farming conditions, it is very difficult to survive the economic stress of a drought which we have known many times in the past. The project features a complete water delivery system, and a complete surface and subsurface drainage system. The past several years we have had a combination of losses from both floods and droughts. Both floods and drought losses would be minimized in the project area when the project is built.

Therefore it is necessary that we receive authorization so we can proceed with the preconstruction phase and the contract negotiation so our people know where they stand.

This project proposal supports a favorable benefit/cost ratio of 1.06 and a rate of return of 8.9 percent. These ratios are important in determining a feasible project, but the real benefits are those which help maintain the family farm.

I would like to review just a few of these extra benefits:

Irrigation would offer more cropping options. With irrigation, there would be an opportunity to stabilize our average yield. Those yields would help to establish local markets with more dependable production. Irrigation can be an extra benefit to the farming community by providing more off-farm jobs for our local people. Hopefully it will slow down the migration of our young people away from our family farms.

In closing I would hope you could see the importance of this project to our area, and give the support it needs to Congress so we may receive authorization.

I would like to thank you, Mr. Chairman, and members of your committee for your time. I do urge you to show Congress that this is a worthwhile project. Thank you very much.

[The prepared statement of Mr. Holzbauer follows:]

Testimony on S.252
Before Subcommittee on Water
and Power
For Hearing on Tues., July 22, 1986

My name is Leo Holzbauer. I am a family farmer and irrigator. My father and family having pumped from wells since (1957).

I can still hear my parents talking about the terrible floods, which lives were lost and a terrific amount of property damage occurring in South Dakota, and also number of down stream states, before the dams were constructed on our Missouri River.

At the same time, Dad hated to see the thousands of acres of good river bottom land that was lost. The productivity that would have been taken off of this land, gone forever, when the dams were constructed. At the same time, the Bureau of Reclamation had promised the State of South Dakota the Pick-Sloan Plan, that the water needed, which was collected behind these large dams, and a portion of the hydro-electric power revenue that the dams created, would be spent back in the State of South Dakota for irrigation projects.

As a present irrigator, I have been intrigued by the quantity and quality of the stored river water in our back yard. The quality of the stored river water has been verified by the Bureau of Reclamation to be the very best available for irrigation.

I became very interested in the 45,000 acre, Lake Andes-Wagner proposal in (1982), when local interests discussed sponsoring a new Bureau of Reclamation study.

Because of the need of quality water delivered to my land, I support this project proposal.

The Planning Report provides adequate documentation that this is a feasible proposal.

Although the farm economy is going through the toughest of times, I believe we must do something to help ourselves.

The project proposal offer's numerous opportunities to the local community. With irrigation, traditional and special crops, could be grown in volume so local processing would be a feasible alternative for the future.

Farmer's future must have a stabilized production year in and year out, to meet present expenses.
Under the present farming conditions, it is very difficult to survive the economic stress of a drought, as we have known them many times in the past. The project features a complete water delivery system and complete surface and sub-surface drainage system. The past several years, we have had a combination of losses from drought and flooding.
Both drought and flood losses will be minimized in the project area when the project is built.

Therefore, it is necessary that we receive authorization, so we can proceed with the pre-construction phase, and contract negotiation so our people know where they stand.

This project proposal supports a favorable benefit - cost ratio of 1.06 and a rate of returns of 8.9%.
These ratio's are important in determining a feasible project, but the real benefits are those that help maintain the family farm.
I would like to review just a few of these extra benefits.

1. Irrigation - would offer more cropping options.
2. Irrigation - would give an opportunity to stabilize an average yield.
3. Those yields would help to establish local markets with the more dependable production.
4. Irrigation - can be an extra benefit to a farming community, by providing more off farm jobs for our local people.
5. Hopefully, it will slow down the out migration of our young people and family farms.

In closing, I hope you can see the importance of this Project to our area, and give the support it needs to Congress, so we may receive authorization.

I would like to thank you, Chairman, and members of your committee for your time, and I do urge you to show Congress that this is a worth while Project.

Thank you very much,
Leo Holzbauer
Leo Holzbauer

Senator MURKOWSKI. Thank you very much, Mr. Holzbauer.
Mr. Uecker.

STATEMENT OF JOHN UECKER, WAGNER, SD

Mr. UECKER. I have been dealing with the Wagner-Lake Andes Irrigation District for 5 years. I have been director, and the guy before me who is now gone has hammered at it for 20 years. I am a family farmer, and operate as a small farmer and just make a living, a one-man operation.

I have been to these hearings and heard about everything you hear—well, this is my seventh hearing in 5 years, and you hear everything. We seem to miss the boat. I was out combining until 12:30 the other night so I could come here. I said, where are we missing the boat?

Maybe Senator Ford kind of brought a little light to the subject. He says, about the deal we struck, you now, Pick-Sloan is where we are missing the boat here, the Pick-Sloan Act. Our Representatives and Senators hammered out a deal back in 1946 or whenever it is, around there, to give up all this land for this project, and we only get 17 percent of the electricity, and everybody else gets it. There is a lot of water there. Everybody claims it, the Federal Government, and everybody gets a little bit of it, but we do not get it.

We have got a great big reservoir of water down there and we don't get nothing out of it really, basically, but good fishing is all we've got out of it. But we're supposed to get irrigation. But Mr. Ford should read the Pick-Sloan Act so that does not happen to his State.

Our Senators and Representatives that hammered out this Pick-Sloan deal would roll over in their graves today if they knew they never delivered on it. They made a deal. Bill Janklow said at the last hearing when we came to Washington, a deal is a deal.

We missed the boat there. Mr. Ford, you read the Pick-Sloan Act, so he doesn't hammer out a good deal for his State and 40 years down the road the guys are still trying to get what the deal was supposed to have been without all this hassle.

This is probably my last shot at it. I know it is I am not going to spend all my life trying to get something—the last time we were here probably in 1960. We were almost as far as we are now the first time around. The Federal Fish, Game, Wildlife wanted to take 7 miles, which would have taken up half my farm. That was back in 1960 and I was in high school then, and that is why I know about it because my dad lived there. They wanted to take up this land to make a marsh out of it.

Well, we did not go along with it. They said, you guys go along with it or your project will never get no place. Our project did not go any place, but we are still back here for one more shot because we were promised by the Bureau that regulations have changed.

But the bottom line last time when we were here is we did not get it. I was just a kid then. They wanted all this land. It is good, prime farm ground, but they wanted more out of us than we could give, and we should not have had to give that, because we already gave where the water is behind Fort Randall Dam.

But we are kind of hammering our heads against the wall here, and we need help. I appreciate you letting us [illegible] and listening, and thanks a lot.

[The prepared statement of Mr. Uecker follows:]

Testimony on S.252
Before Subcommittee on Water
and Power
For Hearing on Tues., July 22, 1986

Mr. Chairman, and members of the Committee.

My name is John Uecker. I live (3) miles north of Wagner, where I have lived all my life on the farm.

I have been to several of these hearings and everytime we hear the same old story.

I'd like to summarize my thoughts on all these hearings, and go back to the beginning. What did South Dakota get out of the Pick-Sloan Act of 1944? (a lot of promises).

In the late 1950's and 1960's, the Bureau of Reclamation made a weak effort to deliver the Pick-Sloan, according to the testimony of the last hearing. Their Project fell through for lack of local support. That is easy to say if you were not there. The bottom line is that the local people would not give up seven farms on Choteau Creek for wildlife. They were greedy. They laid conditions on us we could not live with.

We have spent a lot of time and money, for a project that the Bureau keeps changing the rules on.

The longer we've waited for a project, the bigger the obstacles. This is our last shot at a project in the Lake Andes-Wagner area. Thirty years ago, this Project was the best project in the region and it still is.

Thank you,
John Uecker
John Uecker

Senator **Murkowski**. Thank you, Mr. Uecker. I apologize, but I had some constituents that were in the back room that had to see me and, as a consequence, I had to see them.

Mr. Crisman.

STATEMENT OF ROLAND CRISMAN, CHAIRMAN, LAKE ANDES-WAGNER IRRIGATION DISTRICT, WAGNER, SD

Mr. **Crisman**. Good morning.

Senator **Murkowski**. Good morning, sir.

Mr. **Crisman**. My name is Roland Crisman. I am chairman of the Lake Andes-Wagner irrigation district. I am a farmer and live within the project area. I presently farm with my son.

We are giving testimony today on the irrigation district that has been in study probably the longest of any irrigation district, and has had more studies made of the area to be irrigated. I would not wonder if it has not had more local money already spent on studies.

The Lake Andes-Wagner irrigation district has spent $1,133,640 in taxed money, plus $128,000 interest on short-term deposits from the tax money. The Fort Randall Conservancy District has contributed $80,000 to assist us. The Lake Andes-Wagner Water Systems has spent $537,304 on expenses and cost sharing studies, which comes to a grand total of pretty near $2 million which has been used to try and get an irrigation project started.

The Bureau of Reclamation had a study on the project completed in 1964. It consisted of 40,000 acres to be flood irrigated and about 18,000 acres of the project was to be three low dams in Choteau Creek bottom to make marshes, supposingly for ducks, but local farmers thought there would be more for black birds. It failed because of no local support.

In 1969 after several dry years we started an irrigation district and asked the Bureau of Reclamation to study the project area. It ballooned to over 90,000 acres. We formed an Irrigation Board. I was elected to the board and have served since.

The second year in the study the Office of Management and Budget cut the study funds. We called for a vote and called for a bond issue and hired a private study. The final study failed at a vote because it would be too costly for the irrigators. They would have to pay 100 percent of the cost of the project.

We were included in the State water plan by Governor Janklow in 1981. After the Bureau of Reclamation made an informal study, it was to include 40,000 acres within our 90,000 acre project area of which most of the land was in the 1964 study. The Lake Andes-Wagner Water Systems, Inc., was formed to help with the study.

The Bureau of Reclamation and the State of South Dakota Water Resources personnel have been working with an accelerated study for the project area. We have cost-shared some of the studies.

We have received our final planning report and had hoped to have authorization before now. We are still hoping to have an irrigation project. We have been informed the Pick-Sloan plan called for an irrigation within its manyfold plan. Where is it?

We have been in the shadow of the Oahe irrigation project for a long time, and we have been linked with the Cendak study. Now let us be judged on our own merits. We wonder if the Federal Government is trying to forget their commitment.

We have had excellent working relations with our Senators and Representatives and staffs, the Bureau of Reclamation, the State of South Dakota, the Fort Randall Conservancy Sub-District, and the Southern Missouri Water Development District. They can be thanked for their cooperation and support.

We wish to thank you for your consideration and cooperation in allowing us to meet with you today. Hope our testimony will help with the authorization of our irrigation project and we can proceed with our project and all our studies and the money will not be wasted.

I thank you.

Senator MURKOWSKI. Thank you very much, Mr. Crisman.

Mr. Mark Wiechmann.

STATEMENT OF MARK WIECHMANN, WAGNER, SD

Mr. WIECHMANN. Mr. Chairman, my name is Mark Wiechmann.

My wife and I own and operate a grain and livestock farm in the Lake Andes-Wagner Irrigation District being considered for authorization.

We have developed irrigation using ground water on 270 acres of our farm. We know what irrigation has done for us. Reliable yields has made it possible for us to pay our bills during the droughts of our first years, and volume production has enabled us to maintain our operation with the present commodity prices.

Irrigation has helped us, but using ground water if poor quality is of limited benefit to those of us with access to it, and none to most of the people in our community.

I want to see the project authorized and completed because I see it as my best chance to be able to continue farming.

I hope the committee would favor development as an alternative to continued social spending directed at problems attributable to an agriculture economy unable to maintain the volume or consistency to support ancillary industry.

I would ask you to compare the welfare payments to the unemployed and underemployed to a loan to be repaid that could create the jobs past spending has been unable to produce.

When my mother's town was lost to a Pick-Sloan reservoir, area residents were promised a share in the benefits from the river dams sometime in the future. I ask that you consider this to be the time.

Senator MURKOWSKI. Thank you very much, Mr. Wiechmann.

Mr. Al Zephier.

[No response.]

Senator MURKOWSKI. Is there anyone else that is standing in for Mr. Zephier?

[No response.]

Senator MURKOWSKI. That completes the panel. Gentlemen, I want to thank you very much for your.

We are very pleased to accommodate Congresswoman Smith who has been very patient. We look forward to your testimony and I do apologize for any inconvenience we may have caused you in the manner in which we have handled the witnesses.

Please proceed.

STATEMENT OF HON. VIRGINIA SMITH, A U.S. REPRESENTATIVE FROM THE STATE OF NEBRASKA

Mrs. SMITH. Thank you very much, Senator. If my statement may be in the record, I would just talk off the cuff.

Senator MURKOWSKI. Surely.

Mrs. SMITH. First I want to tell you that I went to Alaska before I came to the Congress for a week of speeches at the university, and I have visited every one of our 50 States, but none where the people were more loyal or more loving to their State than in Alaska.

Senator MURKOWSKI. Thank you.

Mrs. SMITH. It was great. And such happy people. You know, I was in on part of a seminar where they asked a large group of people what were your greatest problems. These are university people asking them. They could not think of any. They had a little trouble, and finally one fellow said, we have got too many dogs. And a woman said the airplane fares are too high. But you know we have so many problems in most of our States, and that was very nice and very refreshing.

Senator MURKOWSKI. That is sure nice to hear. I am going to check my mail and see if that is representative of the complaints I have gotten. Thank you. [Laughter.]

Mrs. SMITH. I am delighted to be here to testify in support of S. 1704. It is almost identical to a bill that I have over in the House. This is in the interest of increasing the ceiling for the funding for the North Loup project in my state and in my district. We have to have a ceiling increase of $140 million.

Now in my bill, which is over in the House on which hearings are not yet scheduled, the folks have so much support for this that the Appropriations Committee idea of asking that we go over the ceiling this year so we do not have to delay the contracts was approved by the authorizing committee. But if we do not get this legislation passed and signed by January 1, then we are going to have to stop the project, which would be a real tragedy.

This project is 52 percent completed. The beautiful lake is there. The dam is there. But we do not have money left for the laterals to deliver the water to the 58,000 acres. Now the key reason we went over the ceiling was because of that Teton Dam disaster, and now this dam has been built according to the new safety standards, and that is where we had to put the extra money.

You know, $140 million seems like quite a bit of money, but I was just reading this morning where we are spending $454 million each to refurbish those old battleships, just the phase one of the refurbishment, and they are not going to provide any food or any wells or any recreation or any good life for anybody, just hopefully, possibly they will help a little bit to keep the peace so that we can go ahead in rebuilding our country with things like finishing this very important irrigation project.

I just might add that we have spent $15 billion on this Metro here in Washington to accommodate 3 million people. That is as much as we have spent in 80 years for funding the Bureau of Reclamation in our 17 reclamation States. I certainly hope your fine committee will see fit to approve this ceiling increase.

[The prepared statement of Mrs. Smith follows:]

TESTIMONY OF THE HON. VIRGINIA SMITH, THIRD NEBRASKA, ON S.1704, TO AUTHORIZE AN INCREASE IN THE APPROPRIATION CEILING FOR THE NORTH LOUP DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM, 10 A.M., TUESDAY, JULY 22, 1986, 366 DIRKSEN SENATE OFFICE BUILDING.

Thank you, Chairman Frank Murkowski of Alaska of the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources, for holding these hearings and for this opportunity to testify on the bill S.1704 in behalf of the people of the Third District of Nebraska and of the project leaders of the North Loup Division of the Pick-Sloan Missouri Basin Program.

This project, already more than half completed, must be finished on time and on schedule. Because outlays are rapidly approaching the indexed ceiling, I have been battling to address the issue of increasing the authorized appropriations ceiling for this project for more than one year, as provided in my own bill, H.R. 2503.

The House authorizing committee so far has not scheduled hearings on my bill, and so I eagerly welcome this hearing about this project so enormously important to my congressional district.

We are talking about increasing the authorized ceiling by about $140.7 million, mainly to cover the cost of making the Calamus Dam, a major feature of this project, safe--in the aftermath of the failure of the Teton Dam in 1976. There are other factors boosting the cost as well. But I will leave the detailed justification to the astute and knowledgeable officials of the Bureau of Reclamation appearing today before you.

No matter how we explain it, however, we are talking about a lot of extra money for a project that was estimated at only $79,500,000 back in January 1972. The completed cost now is estimated at more than $333.9 million, with the indexed ceiling calculated at $193.2 million based on July 1984 prices. As of September 1985, $157 million has been obligated.

Let us keep this matter in perspective, however. This is an investment in the future of America's water resources, in its future food-producing capacity.

With up to three million acres of farmland--and perhaps one million in prime farmland--disappearing every year under urban sprawl, highway building, airports, and other development--the United States cannot afford to stop developing our water resources.

We are today, now, even as we speak, spending vast sums of Federal dollars on far more controversial projects. For example, the Department of Defense is reactivating four old battleships, the Iowa Class, at an average cost of an estimated $454.8 million EACH, or a total o about $1.8 billion. And that is just for the so-called "Phase I" modernization.

No one that I know of ever expects any battleship expense to be repaid to the U.S. Treasury even in part by any entity. No battleship will ever produce an ounce of food or water for an expanding population. No battleship will produce any tax revenues, recreation, or wealth of any kind. No battleship will ever become anything productive. All we can hope is that the Iowa Class ships will help, maybe, to preserve the peace so that we can get on with building and rebuilding this country.

I could cite the Washington, D.C., subway in the same light. Nobody knows it's total cost, but it could be as much as $15 billion, an amount about equal to what has been invested in the Reclamation West over the past 80 years. The subway, however, already is approaching an annual operating loss of $300 million--and the system is far from finished.

Compared to the many water issues facing the Congress today, the amounts being invested in water projects is a drop in the bucket compared to our national needs.

Indeed, the issue today before this distinguished Subcommittee on Water and Power is simply under what terms and conditions are we going to continue to develop and use the relatively scarce water available to us in the 17 Reclamation States.

My own Appropriations Subcommittee on Energy and Water Development has recognized the necessity for finishing this project by negotiating with the authorizing committee in the House for language in H.R. 5162, the appropriations bill for fiscal-year 1987, that will allow construction on the North Loup to proceed.

Here is the language in H.R. 5161 that the House Committee on Appropriations has sent to the floor on this matter:

"Provided further, that none of the funds made available by this or any other appropriations Act shall be expended for construction of the North Loup Division, Pick-Sloan Missouri Basin Program, Nebraska, after August 1, 1987, unless the Congress has enacted legislation to increase the authorized appropriations ceiling for the project to a level adequate to allow completion of the project as authorized; Provided further, that this restriction shall not apply to the obligation and expenditure of funds pursuant to contracts that have been awarded prior to January 1, 1987."

The report accompanying the bill reads as follows:

North Loup Division, Nebraska.--The construction of the North Loup Division, Nebraska, is now more than half complete, but the Bureau of Reclamation has notified the Committee formally that significant progress in construction cannot continue beyond fiscal year 1987 without authorizing additional appropriations. The

Committee provides additional authority to permit construction to proceed on schedule while the authorizing committee considers legislation to provide the appropriations ceiling necesary for completion of the project.

Mr. Chairman, I persuaded my committee to do this in lieu of House action on my bill, H.R. 2503. It is my preference that the authorizing committees consider and act on this project in normal fashion. At the same time, as the official representative of the people of the Third Congressional District, I must act in their behalf to make sure every option is kept open for them.

This legislation, and the House measure, must be passed if this project is to be completed efficiently at lowest possible cost. It will avail nothing for either the Government or the people of the Twin Loups Reclamation and Twin Loups Irrigation Districts to halt construction now or stretch out the work. The project is on schedule, the Bureau's professionals are on the scene, skilled construction companies and crews are hard at work, and there is nothing to do but proceed to finish as quickly as possible.

If the project is cut off from futher funding now, less than half of the total 53,000 acres planned for could be served with water deliveries. That means that water-users' repayments would fall far short of expectations.

It means that the region could never fully realize or utilize the water already filling the reservoir behind the Calamus Dam, a structure that I had the honor to help dedicate a few weeks ago on the Fourth of July.

It means that the project could never fully generate its maximum economic benefits in terms of growth, tax revenues, recreation, and irrigated agriculture.

To have this project aborted would be a tragedy. This project has the support of the entire Nebraska congressional delegation, of the State of Nebraska, an overwhelming majority of project-area people, as well as of the Reagan Administration. This project never was on anybody's hit list.

Today, after 40 years of hoping, dreaming, conflict, and of struggle, the Calamus Dam and Reservoir are real. They exist for the benefit of all. They too symbolize unity, economic freedom, and the liberation from total dependency upon rainfall for our prosperity.

It is a tribute to the unwavering dedication and devotion of the leaders and people who have given life to the project. Of 12 original leaders, five survive: Henry Lange, Don Kilday, Dick Spilinek, Carl Anderson, and Arthur L. "Pete" Russell. There have been others, of course, including former state Senator Don Wagner, and Cyril Shaughnessy, one of the best water lawyers in the state, who was a major leader in the formulation and implementation of the North Loup division.

There are those who cannot understand why, in the midst of surpluses and federal budget deficits, this project--or any water project--should be built in the first place.

Besides the huge annual loss of farmland to urban and nonfarm use, we have only to look at Ethiopia to document the folly of failing to develop water resources. Such failure contributed enormously to the hunger tragedy there. The major river in Ethiopia, the Blue Nile, has nearly three times the annual flow of the Missouri River at Sioux City, Iowa. Yet there has not been a single irrigation project developed in the Blue Nile Basin in Ethiopia.

While water-resource development is nearly at a standstill in the United States--such other lands as China, Brazil, Malaysai, Pakistan, Spain, Sudan, and others are aggressively continuing water resource development.

Without question, the North Loup Division is an extremely important addition to our complex of reclamation projects in the western United States and must be completed if the taxpayers and project-area people are ever to realize maximum benefits from the tremendous investment.

Yes, we have surpluses now. Yes, agricultural land is a glut on the market. Yes, we have a budget deficit.

But all of us know that the world is living hand-to-mouth. Surpluses of commodities have disappeared almost overnight before. It could stop raining in the incomparable breadbasket of the midwest, just as it seems to have stopped raining in our stricken Southeastern states. And just as it stopped raining in the west at the turn of the century with a drought so severe that it led to the reclamation movement and the current programs in the 17 reclamation states.

Nevertheless, water projects often are reviled as wasteful, pork-barrel political pay-offs to Members of Congress.

I ask you what Communist country would not gladly exchange its system's discredited, inefficient agricultural disasters for our incredible success? What sub-Sahara land, and Ethiopia, would not sacrifice its gross national product for our water resources development complex?

The people who built the Calamus Dam and Reservoir know better than the latter-day environmentalists, preservationists, and naturalists can ever know what water-resource development has meant to wildlife and to the enhancement of the environment.

They know that the no-growth preservationists embrace a sterile, joyless philosophy that holds that America's natural resources are about to run out and there will be less and less for more and more people to try to share.

We all know that that is a lie. In developing our water resources, we have seen our country come alive with joy, hope, and optimism that has led to a better and better life and times for us all.

Mr. Chairman, I thank you on behalf of the people of Nebraska, particularly those in the project area, for holding these hearings. I urge the committee to report out S.1704 as introduced, to press for full committee action, followed by final approval by the Senate at the earliest possible moment.

-END-

Senator MURKOWSKI. Thank you very much, Congresswoman. I think your comparisons are very apropos and rather thought provoking.

Thank you for your comments. I wish you a good day.

Mrs. SMITH. Thank you for having me.

Senator MURKOWSKI. Your entire statement will be entered into the record.

Mrs. SMITH. Thank you.

Senator MURKOWSKI. We will next call panel 1. We thank you gentlemen for your patience.

The first witness is the mayor of Dickinson, Hon. Art Baumgartner, who will be joined by the former mayor of Dickinson, Hon. Jack Olin; also accompanying will be Mr. Bruce Pier, city engineer, city of Dickinson; and Mr. Vince Ficek, attorney, Dickinson.

Since you gentlemen have sat through panel 2, I assume that your testimony will not be repetitive of that which has already occurred, because those of us who have to read the records would appreciate any new points or support that has not already been submitted to the committee.

You may proceed as you see fit, gentlemen.

STATEMENT OF ART BAUMGARTNER, MAYOR, DICKINSON, ND

Mr. BAUMGARTNER. Thank you, Mr. Chairman.

My name is Art Baumgartner, mayor of Dickinson. You do have my prepared statement. I will try to skip around and help some of the testimony with the facts I have.

The city of Dickinson wishes to thank the Subcommittee on Water and Power of the Energy and Natural Resources Committee for the hearing regarding the concerns, doubts, and requests for corrective action of the city of Dickinson regarding the bascule gates project. The city asks for your approval of Senate bill 230, a bill for the relief of the city of Dickinson from a bad situation which the city did not create.

The cost of the installation of the bascule gates to provide our needed water supply was estimated initially by the Bureau to be $792,000. The bascule gate was recommended to the city as the only means compatible with the auxiliary spillway already constructed by the Bureau of Reclamation at Bureau expense. In 1978 the total cost was estimated to be $1,023,000. The cost estimate later identified to the city was $1,470,000, at or near the time of execution of the agreement.

Representations regarding the cost of the bascule gates stayed in that range during the negotiations of the repayment contract. Initially the city thought that the contract was to be a water purchase contract like the two contracts already in existence. Instead, the new repayment contract was based on the repayment of the bascule gates plus maintenance and operation.

This was a substantial change to the city of Dickinson in reference to the costs of the bascule gates. The low bid was $919,145 for the bascule gate an overage of $123,000-plus to cover the engineer's estimate of the Bureau of Reclamation.

In March of 1980 the city questioned the necessity of the bascule gates versus fixed crest or other alternatives. The Bureau of Reclamation stated there was no other alternative and the city was locked in the bascule gate or nothing.

In March 1980 the Bureau of Reclamation provided the estimated repayment amount for the bascule gate at $2,439,145 at the same time representing to the city that substantial reductions would be obtained in the area of land and rights which would be reduced to less than half of the estimated $552,940, relocations would be reduced to $229,000 or less from $309,000, engineering and administrative expenses would be reduced substantially by at least $80,000, and construction interest was estimated at $160,000 but would be reduced substantially with consideration being given to work being done by the city or the park district to reduce additional costs. And we did those things.

With those substantial reductions, the city fully expected the repayment contract to stay within the $1.4 million area previously given to the city by the Bureau. That is not surprising when considering the legislation before you as proposed by the Bureau of Reclamation is $1.5 million upon a 40-year term at 7.5-percent interest with the city maintaining the operation and maintenance expenses estimated at $20,000 per year.

Today the final cost given to the city is $3,148,592, plus accruing interest from December 31, 1984. This is a substantial departure from the original representations regarding the contract.

The city accepted the repayment contract on the representations of the Bureau that there was no other alternative. In addition, the city was faced in 1980 with serious drought conditions that the city faced the potential of using water from the sanitary sewage lagoon system for its citizens.

Let me fill you in here. We did put in a pipeline that cost us $85,000 to our third lagoon. We pumped that water into our city and recycled it and used it for city use.

The bascule gate project had problems from the outset. There were numerous change orders prior to construction. The initial design of a two-gate structure became a one-gate structure. There were numerous delays in construction costs by the contractor and design inefficiencies which the city had no control over. The interest instead of being less than $160,000 as of December 31 was $541,000.

On February 21, 1982, the fears of the city came to fruition, for on that Sunday the bascule gate failed and allowed a sudden release of ice and water into the Heart River. The fortunate part about that, if we want to call an accident fortunate, it happened at 3 o'clock in the afternoon, or thereabouts. If that accident would have happened at 3 a.m. with 3½ feet of water going over the dam, I do not know what would have happened to the people downstream. We were fortunate that afternoon to get the crew out, and we jacked up the gates with 100-ton jacks with city crews.

The cost amounted substantially as many modifications were made to the original design, including a log boom, bubbler system, air release system, replacement of end seals, replacement of horizontal seals, an increase in upgrading of the hydraulic system to withstand higher working pressures, hydraulic jacks, overload relief valves, daily monitoring of the date, and considerable testing of the gate.

Is the structure safe? What will happen when an ice flow of the same nature arrives as on February 21, 1982? Will the gate hold? The city has its doubts.

The city has provided the committee with a background statement identifying the specifics which I have alluded to. The Bureau of Reclamation insisted the only way to raise the spillway was the bascule gate. The city capitulated. Many city efforts were made to allow the installation of a fixed crest, but certain policies——

Senator MURKOWSKI. I wonder if you would summarize your remaining remarks. Your 5 minutes has expired, mayor

Mr. BAUMGARTNER. The city does not want litigations of this matter, as it benefits no one. This repayment contract was the result of legislative action and should be corrected by legislative action. The court processes should be only a last resort, and we are here before this committee to ask you for that consideration.

Thank you.

[The prepared statement of Mr. Baumgartner follows:]

MAYOR ART BAUMGARTNER SUBCOMMITTEE SPEECH
Senate Bill 230
Background Statement
Bascule Gate Project
Contract #9-07-60-WR052
Repayment Contract Between the United States
of America and City of Dickinson, North Dakota
Pick-Sloan Missouri Basin Program Dickinson Unit, North Dakota

The City of Dickinson wishes to thank the Subcommittee on Water and Power of the Energy and Natural Resources Committee for the hearing regarding the concerns, doubts and request for corrective action of the City of Dickinson regarding the bascule gate project. The City asks for your approval of Senate Bill 230, a bill for the relief of the City of Dickinson from a bad situation which the City did not create.

The history of the Dickinson Dam with the U.S. Department of Interior, through the Bureau of Reclamation goes back to 1949. To date, pursuant to a Water Contract with the Bureau the City currently pays $33,000.00 per year for the first 1,100 acre feet of the dam. Irrigators also pay for water from the Dickinson Dam at the rate of $1.00 per acre foot and have the next 900 acre feet. The City of Dickinson also, pursuant to a Contract dated May 8, 1962, with the Bureau pays $17.50 per acre foot for additional water averaging $15,000.00 per year. Dickinson's raw water supply has reached a critical stage, and literally only through the good graces of nature in providing sufficient rainfall at critical times, a shortage of water for domestic consumption has been averted in the past. As well, domestic water consumers in Dickinson pay the highest water rate of the municipalities in North Dakota. This high rate is attributable to the payments for the existing contracts and the high cost of treatment of the poor quality of water gathered from the drainage basin.

Dickinson is a regional center for the agricultural and natural resources industry through coal, oil and gas in the area. It is a vital area for North Dakota as well as the United States. Dickinson has already contractually committed itself to the year 1989 for repayment of its share of the cost of the original construction of the Dickinson unit. Now we must meet payments on the Repayment Contract in the amount of $230,421.00 per year. The outlook is not good for the Dickinson citizen. The bascule gate project was to provide a safe annual water supply for an additional 10 year period although payment would extend for a period of 40 years under the repayment schedule of the Bureau. Dickinson must still develop a long term raw water supply source in the latter part of the 1980's.

The cost of the installation of the bascule gate to provide our needed water supply was estimated initially by the Bureau of Reclamation to be $792,000.00. The bascule gate was recommended to the City as the only means compatible with the auxilary spillway already constructed by the Bureau of Reclamation at Bureau expense. In 1978 the estimated total cost was $1,023,000.00. The cost estimate later identified to the City was $1,470,000.00 at or near the time of execution of the contract.

Representations regarding the cost of the bascule gates stayed in that range during the negotiations of the Repayment Contract. Initially the City thought that the contract was to be a water purchase contract like the two (2) contracts already in existence. Instead the new Repayment Contract was based on the repayment of the gates plus maintenance and operation. This was a substantial change to the City of Dickinson in reference to the costs of the bascule gates. The low bid was $919,145.50 for the bascule gate an overage of $123,017.50 over the engineer's estimate of the Bureau of Reclamation. In March, 1980, the City questioned the necessity of the bascule gates versus fixed crest or other alternatives. The Bureau of Reclamation stated that there was no other alternative and the City was locked into the bascule gate or nothing. In March, 1980, the Bureau of Reclamation provided the estimated repayment amount for the bascule gate at $2,439,145.00, at the same time representing to the City that substantial reductions would be obtained in the area of land and rights which would be reduced to less than half of the estimated $552,940.00, relocations would be reduced to $229,000.00 or less from $309,000.00, engineering and administrative expenses would be reduced substantially by at least $80,000.00 and construction interest was estimated at $160,000.00 but would be reduced substantially with consideration being given to work being done by the City or the Park District to reduce additional costs. With those substantial reductions the City fully expected the Repayment Contract to stay within the $1,400,000.00 area previously given to the City by the Bureau. That is not surprising when considering the legislation before you as proposed by the Bureau of Reclamation is $1,540,000.00 upon a 40 year term at 7½% interest with the City maintaining the operation and maintenance expenses estimated at $20,000.00 per year which represents the expectations of the City from the representations of the Bureau in 1979 and 1980.

Today the final cost given to the City is $3,148,529.43 plus accruing interest from December 31, 1984. This is a substantial departure from the original representations regarding the contract.

The City accepted the Repayment Contract on the representations of the Bureau that there was no other alternative. In addition, the City was faced in 1980 with serious drought conditions the City facing the potential of using water from the sanitary sewage lagoon system for its citizens.

The bascule gate project had problems from the outset. There were numerous change orders prior to construction. The initial design of the two (2) gate structure became a one (1) gate structure. There were numerous delays in construction caused by the contractor and design inefficiencies which the City had no control over. The interest instead of being less than $160,000.00 as of December 31, 1984, was $541,393.00.

On February 21, 1982, the fears of the City came to fruition for on that Sunday the bascule gate failed and allowed a sudden release of ice and water into the Heart River. Damage was done to public and private property downstream and the City incurred numerous expenses and costs for personnel, equipment and the rental of additional equipment to ease the problem. At this point and time the Bureau proceeded to correct the design inefficiencies of the bascule gate thus resulting in the substantial increase in the contract price from 1.4 to over 3.2 million.

The cost amounted substantially as many modifications were made to the original design including a log boom, bubbler system, air release system, replacement of end seals, replacement of horizontal seals, an increase in upgrading of the hydraulic system to withstand higher working pressures, hydraulic jacks, overload relief valve problems, daily monitoring of the gate, and considerable testing of the gate. Is the structure safe? What will happen when an ice flow of the same nature arrives as on February 21, 1982, will the gate hold? The City has its doubts.

The City has provided the committee with a background statement identifying the specifics which I have alluded to. The Bureau of Reclamation insisted the only way to raise the spillway was the bascule gate. The City capitulated. Many City efforts were made to allow the installation of a fixed crest but certain policies of the Bureau of Reclamation which could have been modified to allow a fixed crest prevented that proposal. We know now that the gates have failed, they are already loaded with numerous mechanical design systems, the more mechanical things in the design obviously through common sense increasing the probability of failure. The Bureau's engineers said there would be no problem with ice, no problem with a surge of water when the gates were lowered, no problem with the sensing device, but we now know the gates have failed that initial representation. The Bureau of Reclamation claims those conditions have been corrected and the gates are reliable and working. Even if it is, the cost is now more than twice what the City expected.

The City of Dickinson expected to pay $1,400,000.00 for the bascule gate. That has now changed to 3.2 million dollars because of the massive changes in the system as a result of design inefficiencies and problems which the City had no control over. The existing Repayment Contract is unconscionable to the City of Dickinson. The proposal of the Bureau of Reclamation at the September 23, 1985, meeting between City officials, Russell Brown and Senator Quentin Burdick was a compromise solution. It puts the City where it reasonably expected to be. Provided the Bureau of Reclamation is correct that the gate is now functional the City will receive a short term benefit but that benefit should be proportionate to the cost originally represented to the City of Dickinson.

The City does not want litigation of this matter as it benefits no one. This Repayment Contract was a result of legislative action and should be corrected by legislative action. The Court processes should only be a last resort and we are here before this subcommittee asking for that consideration.

Senator **Murkowski**. Thank you.

I wonder, mayor, do you basically support the amendment by Senator Burdick?

Mr. **Baumgartner**. For the $1.5 million?

Senator **Murkowski**. Yes.

Mr. **Baumgartner**. We do.

Senator **Murkowski**. Thank you very much.

Mr. Olin, Mayor Olin.

STATEMENT OF HON. JACK OLIN, FORMER STATE SENATOR FROM THE STATE OF NORTH DAKOTA

Mr. **Olin**. Thank you very much, Mr. Chairman.

My name is Jack Olin, and to correct the record I am a former Senator, not a former mayor.

I just want to reiterate pretty much what our mayor has said. I would be remiss if I did not welcome you to western North Dakota after hearing you talk about the pheasants and other game that is available in other States. We have pheasants, grouse, deer, and antelope. So by all means, come out and visit us.

Senator **Murkowski**. Thank you.

Mr. **Olin**. Just a little further on the fact that while we were entering into this contract with the Bureau, the problems we were having due to an extreme water shortage were somewhat compounded by the fact that Dickinson was trying to help answer to the energy needs of the Nation at the time, and we had an oil boom occurring, heavy use on water, and just absolutely had to do something.

While no one really agreed with the concept of the bascule gate, we accepted the concept and thereby ended up with the problem. I am sure that had the contract been for $3.2 million at that time, the city probably would not have been able to stand it because of the extreme cost and the extreme expenses that this would put on the local people.

So once again, we do ask your support for the amendment. The city is giving a lot, and the fact that it is higher by far than when we started, and as Senator Andrews had alluded to, the maintenance and operation was originally thought to be about $6,000. We are now agreeing to take that up to $20,000 with the city implementing in-kind services to stay within that.

So we do ask your support of the amendment, and I thank you.

Senator **Murkowski**. Thank you very much. Is it correct, Senator Olin?

Mr. **Olin**. Former State Senator Olin, yes.

Senator **Murkowski**. All right. We stand corrected.

Our next witness is Mr. Bruce Pier, city engineer.

STATEMENT OF BRUCE PIER, CITY ENGINEER, DICKINSON, ND

Mr. **Pier**. Thank you, Mr. Chairman.

I, just for the essence of time, concur and the city does support this bill.

Senator **Murkowski**. Thank you. We appreciate your brevity, and your bottom line. It is very clear. I would also indicate to Senator Olin his entire statement will be entered into the record.

The next witness is Mr. Vince Ficek, attorney with the Ficek law office in Dickinson.

STATEMENT OF VINCE H. FICEK, CITY ATTORNEY, DICKINSON, ND

Mr. **Ficek**. That is correct, Your Honor.

Senator **Murkowski**. I wanted to clarify. Senator Ford talked about the 3,400 capacity. That is the capacity with the bascule gate. What happens is the first 1,100 acre-feet of the Dickinson Dam which we use for municipal water supply comes from a 1949 contract. We pay approximately $30,000 per year for it. The next 900 acre-feet go to irrigators at $1 per acre-foot. Then we would obtain the next 400 to 500 for the gates for putting it in at $17.50 per acre-foot.

So when you look at our annual payment under the repayment contract of over $230,000 per year, for that additional 900 acre-feet we are going to pay if we bought it on a water-purchase basis over $250 per acre-foot. It just puts it totally out of sync with what the Bureau is already charging us on other contracts.

Finally, the last item I wanted to mention, Senator, was in reference to the mayor's identification of the March 1980 estimate of the Bureau at the cost being $2,439,000. In calculating and looking at those estimates, these types of things have actually happened. Land and rights have been reduced from $552,940 to $227,309. Relocation costs have been reduced from $309,000 to approximately $160,000. Overhead expenses we were told were to be at least $80,000 less than the $390,000 estimated. If you take a look at all of those factors, the increased construction cost in interest, we would be at that $1.4 million, at $1.5 million, which is what the Bureau recommended at our previous meeting.

I think, Senator, with that I will close.

[Subsequent to the hearing Mr. Ficek submitted the following:]

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July 29, 1986

Senator Frank H. Murkowski
Chairman, Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
SH-212
Washington, DC 20510

RE: Senate Bill 230, Bascule Gate Project, Contract No. 9-07-60-WR052 Repayment Contract Between United States of America and City of Dickinson, North Dakota

Dear Senator Murkowski:

Reference the testimony of the City of Dickinson at the July 22, 1986 hearing before your subcommittee regarding Senate Bill 230 for the relief of the City of Dickinson, North Dakota. Also reference Senate Bill 230 Background Statement dated July 11, 1986 already on file with your committee.

During the testimony of C. Dale Duvall, Commissioner of the Bureau of Reclamation, you posed a question to Mr. Duvall regarding the responsibility for the additional costs attributable to the design inefficiencies and problems of the bascule gate. You instructed Commissioner Duvall to provide a written statement to the subcommittee within two (2) weeks regarding this important question and also allowed the City of Dickinson to respond as well.

The City of Dickinson appreciates your concern which was evident through the questioning process of Commissioner Duvall regarding the plight of the City of Dickinson. Your knowledge of the City's problem regarding this project and your staff's work, particularly Russell R. Brown, in this regard are truly commendable.

Commissioner Duvall did not really have an answer. In reviewing his testimony the whole basis for opposition to Senate Bill 230 is based upon a March 3, 1980, Bureau of Reclamation letter to the City of Dickinson in which the costs of the bascule gate were outlined totaling $2,279,145.00. Commission Duvall then stated that the City of Dickinson consented to the cost at that time with full knowledge of the consequences. In fact, the testimony of Commissioner Duvall revealed that the contract estimated cost was $1,540,000.00 before the March 3, 1980 letter. This is an error as the estimates were $792,000.00 in 1975, $1,023,000.00 in 1978 and finally $1,470,000.00 when the revised contract covering repayment of the costs of installation was approved by Assistant Secretary of the Interior, Guy Martin, on June 1, 1979. The March 3, 1980, letter from Joseph B. Marcotte, Jr., Acting Regional Director to the City identified costs of the bascule gate at the apparent low bid of $919,145.50.

The other estimated costs were as follows:

Bascule gates (apparent low bid)	$ 919,145.50
Land and rights	552,940.00
Relocations	309,000.00
Fish and wildlife facilities	22,000.00
Minor contracts	85,625.00
Engineering and administrative expense	390,435.00
TOTAL	$2,279,145.50

After receipt of that letter there were meetings held with personnel of the Bureau on March 11th and 18, 1980, after which City Attorney, Maurice R. Hunke, in a letter dated April 7, 1980, to James A. Rawlings, Assistant Regional Director on behalf of the City informed the Bureau that the City's concurrence was based upon representations from the Water and Power Resources Services that the City may expect substantial reductions in various areas of the estimated costs of the total project which were contained in the letter from the Acting Regional Director dated March 3, 1980 to then Mayor Schank. Those substantial reductions which the City would realize were in the area of land and rights, relocation, engineering and administrative expenses and interest reductions.

Pursuant to a letter dated December 14, 1984, from D. L. Krull, Project Manager, the final estimated costs on December 31, 1984, were $3,148,529.43. The bulk of the increase was attributed to seventeen (17) separate modifications to the bascule gate design caused by design inefficiencies and other problems created somewhere between the Bureau of Reclamation and the contractor. Because of the long period of time attributable to the delays caused by the design inefficiencies and problems which were the responsibility of the Bureau, interest during construction increased from $160,000.00 to $541,393.00 and continues to rise since December 31, 1984. The operation, maintenance and replacement costs estimated in 1975, at $6,000.00 are now estimated at $20,000.00 or more. In that letter the following final costs were realized:

Land and rights	$ 227,309.80
Relocations	160,266.78
Fish and wildlife facilities (wildlife mitigation)	0.00
Minor contracts	7,463.24
Engineering and administrative expenses	765,648.28
Bascule gate	1,296,448.33
Additional land easements	120,000.00
Audio alarm system	30,000.00
TOTAL	$2,607,136.43

The bascule gate contract price, the overhead costs, the future costs including additional land easements, audio alarm system, increased construction interest were all the results of the design inefficiencies, delays and problems of the bascule gate beyond the control of the City. When one subtracts the present land and rights, relocations, minor contracts, wildlife mitigation costs we arrive at what the City honestly expected to pay. The administrative and engineering expenses of $390,435.00 were represented to the City that it would be reduced by at least $80,000.00 and probably more. Instead it increased or doubled by virtue of the problems the Bureau of Reclamation had with the bascule gate. Future costs increased regarding additional land easements and the audio alarm system because of the failure of the gate and the design inefficiencies. Interest during construction increased from $160,000.00 to $541,393.00 and was represented to be less than the $160,000.00 given to the City by the Bureau of Reclamation. It is clear on the basis of these figures where the responsibility lies for the increased cost. Taking Commissioner Duvall's position that the City consented to the estimated $2,279,145.00 cost and subtracting the re[redacted] the cost of the bascule gate should have been less than [redacted] without the design modifications, increased interest costs and the like.

In any contract situation the consideration must be set forth with accuracy, [redacted] expecting to pay [redacted]ss. The results have substantially changed. The City would not have executed this contract had they known the price for this bascule gate was to be 3.2 million dollars plus. This is particularly evident when the City of Dickinson expressed its concerns at that time regarding the reliability of the bascule gate in southwestern North Dakota where the climate is subject to very adverse changes. As Commissioner Duvall admitted in his testimony, the Bureau of Reclamation was the expert and the superior knowledge was held by them. The City relied upon that expertise.

The water supply for Dickinson in early 1980 was of particular importance to the City. Energy development was booming in western North Dakota and this boom caused an increased population to the City of Dickinson. This energy development was very important to the United States as a whole. In addition, the City was faced with a severe drought in the spring of 1980 which continued for a long period of time during the negotiations and construction of the bascule gate. The City had no choice but to rely upon the expertise of the Bureau of Reclamation. The responsibility is clear, it was the Bureau of Reclamation's responsibility to provide a bascule gate that would provide increased water supply for $1,400,000.00 or less pursuant to the contract, the representations and expertise of the Bureau of Reclamation.

The Bureau of Reclamation resists Senate Bill 230 with no substantiation particularly when the Repayment Contract allows for legislative changes. The contract has a provision for legislation providing a basis to renegotiate the repayment arrangements presented in the contract. The contract authorizes deferment of existing contract obligations upon congressional passage. The facilities have failed. Numerous modifications have been made. The increased costs are attributable to the failure of the gate and design inefficiencies. The City should be relieved from liability under the contract for those items beyond its control for which it has no responsibility.

Again, the City of Dickinson thanks the Honorable Senator Murkowski, the Subcommittee and its staff for its help in pursuit of a reasonable, equitable solution to a problem that can best be resolved through the legislative process.

Sincerely,

Vince H. Fisek
City Attorney

VHF/ds

cc Senator Quentin N. Burdick
Representative Byron Dorgan
Senator Mark Andrews
Russell R. Brown

Senator MURKOWSKI. Thank you very much for clarifying that point, Mr. Ficek. I think that does address a concern.

I want to thank you, gentlemen, for your testimony. We wish you a good day.

Our next witness, and according to my friend and colleague Russ Brown, he has inadvertently overlooked Hon. C. Dale Duvall, Commissioner, Bureau of Reclamation, but I will no longer overlook him and request that he come before the committee. We look forward to his testimony.

Commissioner Duvall.

After this, I will call panel 3 and 4 together, and that will conclude our hearing.

Mr. Commissioner, you have heard undoubtedly the Bureau mentioned on several occasions on the legislation which is before the committee, and we would appreciate your evaluation of the position of the Bureau. You may proceed as you see fit, sir.

STATEMENT OF HON. C. DALE DUVALL, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Mr. DUVALL. I thank you, Mr. Chairman.

I guess the position that I feel I am in this morning is one of a Johnny-come-lately commissioner who has inherited a problem. From the standpoint of people within the area of North Dakota who are affected by this problem there is great support for resolution. I can assure you that within the Federal Government there is also support for resolution.

However, I am faced and blessed with the position of coming here with the Contra position. The position of the administration is that S. 230 should not be supported. This project was initially estimated to cost $1.54 million, the design and building proposals were received from various contractors, the contractor that was selected to perform the work issued a proposal at $2.28 million, and that proposal was submitted to the city of Dickinson and the city of Dickinson, in writing, accepted that proposal and urged us to proceed with the work.

At a later point in September of 1980 the city asked us to reconsider the decision to use the bascule gate modification. They engaged an engineering firm to look at the bascule gates. The city presented us with the engineering firm's proposal which indicated that raising the level of the dam might be an alternative method.

We studied the proposal and suggested to them that we should stick with the bascule gate installation for the following reasons:

No. 1, it was imperative to the city that they have the ability to provide for flood flows. We are concerned with an area where at one moment you may have drought conditions and the next moment you may have flood conditions, and that has been the history of the area. It was important to the safety of the area to have the ability to evacuate the reservoir in the event of an impending flood. The raising of the level of the dam would not provide that ability.

The second point, and perhaps the most convincing argument, was that it was recognized that a permanent height extension to the spillway would incur a much greater cost than the installation of the bascule gate plan.

Armed with that evidence, the city then asked us to proceed with the construction of the bascule gate modification as expeditiously as possible. The installation of the bascule gates was essentially completed in February of 1982 and preliminary testing begun. However, in that same month, the warm weather caused the rapid melting of the snow and ice and a related increase in the reservoir level. It was in conjunction with the warmer weather that a large piece of ice of approximately 9,000 square feet in size dislodged and jammed against the gates causing damage to hydraulic lines and preventing the gates from remaining closed, which caused the flooding condition.

The Bureau, studying the results of this incident, concluded that additions were necessary to the installation of an ice boom, a gate deicing system, and an alarm and monitoring system.

In December of 1983, the city sent the regional director a resolution stating that the city had determined that the United States, through the Bureau of Reclamation, had breached its contract with the city. The testimony that people have given prior to me today, bring us up to date.

On our behalf, we regret that a conflict occurred with the city of Dickinson, or with any beneficiary of the project, and the Bureau of Reclamation is attempting to resolve that conflict. We recognize that the city has incurred an increase in repayment obligations. This is due to the additional construction necessary for the bascule gate facilities, and because additional interest during construction has been compounded into the $3 million contract repayment number.

It is however our view that the final engineering configuration of the bascule gates is the necessary and the appropriate design to cope with the climatological environment which exists at Dickinson Dam, and we believe that the cost of providing that structure is a realistic cost for the ultimate design necessary for the requirements of the bascule gates.

Further, the bascule gates are performing as anticipated and they are providing the water that the city needed and expected, as well as the ability to protect the city from the event of an uncontrollable flood. Therefore, pursuant to its contract the city is obligated to reimburse the United States for the benefits provided.

I stand prepared to answer any questions you may have.

[The prepared statement of Mr. Duvall on S. 230 follows:]

TESTIMONY OF
COMMISSIONER C. DALE DUVALL
BEFORE THE SUBCOMMITTEE ON WATER AND POWER
OF THE ENERGY AND NATURAL RESOURCES COMMITTEE
UNITED STATES SENATE
ON S.230, A BILL
"FOR THE RELIEF OF THE CITY OF DICKINSON, NORTH DAKOTA"

Mr. Chairman, thank you for the opportunity to comment on S. 230. We oppose the enactment of S. 230. Our opposition is based upon evidence which documents the Bureau of Reclamation's continued good-faith efforts over the course of construction of the Dickinson Dam Modification to provide the City of Dickinson the opportunity to accept or reject the construction as it was originally designed. The Bureau of Reclamation constructed the bascule gates of the Dickinson Dam Modification with the consent of the City; therefore, we do not see the prudence of relieving the city of the repayment obligation which has provided, and will continue to provide, the benefits the city sought.

Public Law 94-228, Title II (90 Stat. 206), March 11, 1976, authorized the modification of the Dickinson Dam to increase the conservation storage of Edward Arthur Patterson Lake by installing gates on the existing spillway. The law also provided for construction of an auxillary spillway for dam safety purposes.

The City of Dickinson entered into a contract with the United States in July of 1979 for repayment of the reimbursable costs of the Dickinson Dam Modification. The contract estimated the cost to the city of $1,540,000. On March 3, 1980, the Bureau of Reclamation sent a letter to the city in which the bid costs of the modification were outlined, and the total costs were calculated to be $2,279,145. Article 3b of the repayment contract provides that the city has 30 days to accept or reject the bid price for the cost of the modification. The city sent a letter to the Regional Director, in Billings, Montana, on April 10, 1980, accepting the bid construction price of the Bascule gate modification and encouraged the Regional Director to proceed as quickly as possible with the construction.

In September of 1980, the city sent a letter to the Regional Director asking that the construction on the Bascule gate be suspended until the city had had time to reassess the Bascule gate modification. The city retained a consulting engineer to review the Bureau plan for the Bascule gates, and on his recommendation sought to have the plan revised to change the construction from the Bascule gate construction to a raised concrete extension of the existing spillway. In a letter, dated October 1, 1980, the Regional Director sent a letter to the city outlining the reasons for the decision to pursue the Bascule gate modification as opposed to the addition of an extention to the dam. The reasons for the Bascule gates were based on:

1. A need to maintain a capability to evacuate the reservoir during flood control operations, and

2. The recognition that a permanent height extention to the spillway would incur much greater costs than the Bascule gate plan.

On January 6, 1981, the city sent a letter asking the Regional Director to proceed with the construction of the Bascule gate modification as expeditiously as possible.

The Bascule gates were essentially completed in February of 1982, and preliminary testing was begun. In that same month, warm weather caused rapid melting of the winter snow and ice causing a rapid increase in the reservoir level. During automatic operation of the gates, a large piece of ice, approximately

9000 square feet in size, broke free in the reservoir, and jammed against the gates causing damage to the hydraulic lines and causing the gates to fully open. The large surge of water into the river channel caused minor flooding in the City of Dickinson. Subsequent field tests of the gates indicated that the hydraulic system of the gates was not adequate against a full reservoir, nor was the aeration system adequate to prevent ice buildup on the gates. In addition to those design changes, the Bureau concluded that other additions to the structure were necessary: (1) installation of an ice boom to prevent large masses of ice from passing over the gates, (2) installation of a gate de-icing system, and (3) installation of an alarm and monitoring system.

On December 19, 1983, the city sent to the Regional Director a resolution stating that the city had determined that the United States, through the Bureau of Reclamation, had breached its contract with the city, and that the city rejected its contract with the United States for repayment of the costs associated with the Bascule gate modifications. In response, the Regional Director stated that the Bureau of Reclamation had kept the city informed concerning the efficacy of the Bascule gate option and the costs associated with the gate construction; and therefore, pursuant to their repayment contract, the city was obligated to repay the costs of the Bascule gate modification. On January 3, 1985, the Regional Director, sent a letter to the City of Dickinson advising the city that the Bascule gate modification was considered complete and operational. The city was also advised that the final cost of the construction was calculated to be $3.15 million. In our view, our opposition to S. 230 rests on the following points:

1. Public Law 94-228 states, "Sec.201. The Secretary of the Interior is authorized to modify the spillway of Dickinson Dam on the Heart River in the State of North Dakota, to increase conservation storage by installing gates on the existing spillway."

2. The Bureau of Reclamation has determined that the Bascule gate option for providing the 900 acre-feet of additional municipal and industrial water for the City of Dickinson is the most operationally and financially prudent approach.

3. The repayment contract, No. 9-07-60-WR052, provides that:

a. Pursuant to Article 3b, the city had the option to accept or reject the construction, and its associated costs, of the Bascule gate modification. The city accepted the Bascule gate option, at a cost of $2.28 million ($2.28 million was the estimated cost in the March 3, 1980 letter to the city), by its letter of January 6, 1981.

b. Pursuant to Article 4, the city is obligated to repay all the costs associated with the construction which provides increased conservation storage to Edward Arthur Patterson Lake.

4. The facilities and benefits anticipated by the city have been constructed and provided by the Bascule gates features of the Dickinson Dam Modification, and the city has the use of those benefits.

We regret any conflict between the City of Dickinson and the Bureau of Reclamation concerning the Bascule gates construction on Dickinson Dam. We recognize that the city has incurred an increase to its repayment obligation due to the additional construction necessary on the Bascule gate facilities, and the added interest during construction from the various delays. It is our view that the final engineering configuration of the Bascule Gates is the necessary design to cope with the climatological environment which exists at Dickinson Dam. We believe that the cost of providing that structure is a realistic cost for the ultimate design necessary for the requirements of the Bascule Gates. Further, the Bascule Gates are performing as anticipated, and providing the water the city expected. Therefore, pursuant to its contract, the city is obligated to reimburse the United States for the benefits provided.

Thank you for the opportunity to present the views of the Department of the Interior. I would be pleased to answer your questions.

Senator MURKOWSKI. I assume you are going to comment on each of the bills before us?

Mr. DUVALL. On the other bills?

Senator MURKOWSKI. Yes.

Mr. DUVALL. That is correct. I can take them all in order if you would like.

Senator MURKOWSKI. Before you do, let us get this one out of the way, because I do have several questions.

In the evaluation of the responsibility associated with the modification, or gates, or whatever is contested here, is it not the responsibility from the standpoint of engineering and design that indeed the Bureau of Reclamation is the appropriate agency and not the city with regard to the cost escalations associated with this project which now are in the area of $3.22 million?

Mr. DUVALL. If I understand your question, Mr. Chairman——

Senator MURKOWSKI. Who is responsible for the escalation in the design, the modification, and construction, and so forth?

Mr. DUVALL. The escalation of the cost comes from two primary functions. One is the delay that has occurred in resolving the problem which results in a significant increase in the interest during construction.

Senator MURKOWSKI. Who is responsible for that?

Mr. DUVALL. Under the repayment obligation, or repayment contract that we have, those costs would be compounded or added into the repayment balance and the city of Dickinson would be responsible.

Senator MURKOWSKI. Who is responsible for it, though? The city is responsible for paying, but who is responsible for the design, the delay, the inefficiencies that are alleged? Is it the Bureau, or is it not?

Mr. DUVALL. It is the position of the administration that it is not the Bureau's responsibility.

Senator MURKOWSKI. Then whose is it?

Mr. DUVALL. It is the responsibility of the city of Dickinson.

Senator MURKOWSKI. Did the city design it?

Mr. DUVALL. No, the city did not design it.

Senator MURKOWSKI. Who designed it?

Mr. DUVALL. It was a contractor design.

Senator MURKOWSKI. Who approved the design?

Mr. DUVALL. The Bureau of Reclamation sought and reviewed the proposal——

Senator MURKOWSKI. And signed off on the proposal?

Mr. DUVALL. With the concurrence and the advice of the city of Dickinson.

Senator MURKOWSKI. Well, I know, but you have got a city of 16,000 people and the expertise of the city is significant, but from the standpoint of the Bureau of Reclamation who has a great deal of expertise in projects of this nature, to suggest that the responsibility is primarily the city's you are going to have to be more convincing to me than you have been.

Mr. DUVALL. OK. I will concede that there is a higher level of technical expertise that should be expected from the Bureau's engineering staff and planning people than one would expect to find in a city the size of Dickinson.

Senator MURKOWSKI. Well, OK. I think we both agree on that. Do you support the amendment on S. 230 as proposed by Senator Burdick?

Mr. DUVALL. I am not in a position to support that amendment primarily because of the fact that the initial acceptance from the city of Dickinson called for a total construction cost of $2,279,145. They ordered it, sir, or instructed us to proceed with construction knowing that the bascule gate installation was going to cost that amount.

Senator MURKOWSKI. Well, of course the amendment here is an attempt to reach a compromise, and I guess it is not a compromise unless all people accept it, and you are speaking on behalf of the administration saying that you do not support it. Is that correct?

Mr. DUVALL. That is correct.

Senator MURKOWSKI. What do you support?

Mr. DUVALL. Well, the only thing that I am authorized to support is the full reimbursement under the contract.

Senator MURKOWSKI. Who gave that authorization?

Mr. DUVALL. A combination of the Secretary of the Interior and the Office of Management and Budget.

Senator MURKOWSKI. Well, did they both agree? Or did one simply say, OMB just dictates that you do not support any funding measures for Bureau of Reclamation projects?

Mr. DUVALL. No. There was no conflict between the two parties.

Senator MURKOWSKI. They both agreed that there was not going to be any support for funding Bureau of Reclamation projects, then? Is that right? I mean, if you do not support anything other than full repayment and you question who is responsible for it, we seem to agree that the Bureau of Reclamation has a greater capability than the city of Dickinson, which is something that I certainly agree, then I think the question of what is a fair position for the Government to take I think has to be at least addressed by the administration, as opposed to saying we support the entire payback.

Mr. DUVALL. I would say in response to your statement, Mr. Chairman, that if the project had failed or been abandoned, then there would be support from within the Department of the Interior and probably justification in my own mind for saying we should go back and revisit this repayment contract.

Senator MURKOWSKI. Are you suggesting that the city of Dickinson abandon it, and then in that way the Federal Government would consider whatever its liability or responsibility might be? Maybe that is what the city should do, just say, hey, we abandon it.

Mr. DUVALL. I do not think that abandoning the project would have been a viable option, because it is an essential source of water supply to them.

Senator MURKOWSKI. Well, I know, but there is a legitimate question here of the responsibility for design modifications, extended construction which escalated the cost. I do not know that it is necessary for this committee to go into the details of who is responsible for that, but I assume that you know who is responsible for it, because you have engineers and people who have evaluated this project and have probably spent an awful lot of time addressing the responsibility.

It would seem that once that responsibility is fixed as to whom it is, then you can look toward who is responsible for the obligation.

Mr. **Duvall**. I am not sure what you are asking.

Senator **Murkowski**. I am talking about what you are for, and you indicate that you are for the city of Dickinson paying or being responsible for the entire $3.2 million.

Mr. **Duvall**. That is what I am saying in the statement that is presented for the record. That is correct. As to the amendment, the amendment was not part of the documentation that I saw when my statement was prepared.

Senator **Murkowski**. Well, the thing I do not understand is in 1976, Public Law 94-228, among other things, authorized the Secretary of the Interior to construct the spillway for safety purposes, install the bascule gate at the existing spillway of the dam in order to increase storage capacity, and the gates were raised, and so forth. The act required the city of Dickinson to repay an estimated $681,000.

Now it further says that due to inflation, design modifications, extended construction period, the final cost allocated to water supply and repayment escalated to $3.22 million.

Now the question is, who is responsible for that? If you are not prepared to provide that for the record now, I would ask that you submit it for the record by your staff, and that the city of Dickinson respond by indicating their understanding. Because just to leave this thing in conflict on the question of responsibility I think gets us nowhere.

There is an amendment here proposing an alternative, which is unacceptable to the administration. So my question is, what does the administration support? The administration has to recognize that they have a responsibility certainly for the cost overrun, and to just wash their hands of it, or suggest that the city should abandon it and that would solve the problem—I know you do not seriously mean that——

Mr. **Duvall**. That is not serious.

Senator **Murkowski** [continuing]. But that has been the only alternative that has been addressed and it is not satisfactory nor acceptable to the chairman.

Mr. **Duvall**. The comment that I was making with respect to the amendment was that the amendment suggests that the city be obligated to repay $1,540,000. It strikes me from my standpoint, and it is not something that I have been authorized by the Secretary of the Interior to propose, but it strikes me that when the city made the election to instruct us to proceed with the project knowing that there was a cost at that time of $2,280,000, that there would be little justification at this point for us to entertain a compromise position below that.

The splitting of differences, if one was to get down to the point where you are negotiating a conflict resolution, generally you start between the conflict, the two points of conflict. It seems to me that it is reasonable that if there was to be a resolution, or to find middle ground here, it would be between the $2,280,000 and the $3.2 million, whatever that is.

Senator **Murkowski**. What was the communication between the city at the time that the city was aware that it might have to assume an obligation of $2.2 million?

Mr. **Duvall**. Between the time?

Senator **Murkowski**. Yes. In other words, it was apparent at one point in time according to your testimony that there was an authorization to go ahead and they were already at $2.2 million. Was the city willing? Did it openly accept that?

Mr. **Duvall**. I would have to check the actual——

Senator **Murkowski**. I wonder if the city attorney may enlighten us at this time?

Mr. **Ficek**. Senator, there was a March 3, 1980, letter to the city which identified that cost figure that Mr. Duvall talks about. It was responded to by city attorney Morris Hunkey at that time. He indicated to the Bureau of Reclamation at that time that they understood that that figure was there, but that also was represented to the city that there were those substantial reductions that we could expect in land acquisition, relocation costs reductions, overhead costs to be reduced. So that overall the $2.4 or $2.2 million that Mr. Duvall speaks about really comes back to that $1.4, $1.5 million figure which the city actually expected to pay for the gate.

Senator **Murkowski**. Thank you for the clarification.

I would ask the Commissioner to provide for the record an analysis of the responsibility for the cost overruns, modifications, construction, engineering, design, and so forth, and I would appreciate the city providing us with that same information.

[Mr. Duvall submitted the following:]

United States Department of the Interior
BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240
August 11, 1986

IN REPLY REFER TO: 400

Honorable Frank H. Murkowski
Chairman, Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On July 22, 1986, I testified before your subcommittee on S. 230, "A BILL FOR THE RELIEF OF THE CITY OF DICKINSON, NORTH DAKOTA". At that hearing, I was asked to provide for the record an analysis of the responsibility for the cost overruns, modifications, construction, engineering, design, and related matters.

It is my belief that the exchange of correspondence between the Bureau and the city of Dickinson sets forth our position to your request. Therefore, I am submitting the enclosed correspondence for that part of the record:

> March 3, 1980, letter to Honorable Harry Schank, Mayor of the city of Dickinson, which sets forth the details of cost estimates totaling $2,279,145.50 for the reimbursable costs of the bascule gates at January 1980 price levels.
>
> March 24, 1980, letter to the Honorable Harry Schank, Mayor of the city of Dickinson, which agreed to an extension of the 30-day period to review the costs and make a decision on the project on or before April 10, 1980.
>
> April 7, 1980, letter from Maurice R. Hunke, City Attorney, which stated that the board of the City Commissioners for the city of Dickinson did, by unanimous vote, accept the apparent low bid for the construction and installation of the bascule gates.
>
> September 4, 1980, letter from Maurice R. Hunke, City Attorney, which pointed out that the Dickinson area had experienced a serious drought and that the board of the City Commissioners at its meeting on September 2, 1980, decided to re-evaluate the project and requested that further work on the project be ceased until the city had opportunity to evaluate a series of questions.
>
> January 6, 1981, letter from Maurice R. Hunke, City Attorney, which confirmed that the board of the City Commissioners for the city of Dickinson had rescinded the prior action of

> September 2, 1980, and unanimously passed a request for the Bureau to proceed, as expeditiously as possible with the installation of and the swift completion of the Bascule Gate Project.

The foregoing correspondence exchanges took place in full recognition of Contract No. 9-07-60-WR052, dated July 11, 1979, which stated in article 4.a., "The City's obligation under this contract shall include the actual construction cost of increasing the conservation storage capacity of Edward Arthur Patterson Lake including interest during construction identified in Article 3 above."

In view of the proposed bill which would provide relief in excess of $1 million to the city of Dickinson, I am concerned that favorable action by the Congress, in granting such relief, would establish a precedent that would not be in the best interest of the United States. That precedent could very well lead to demands for relief from payment for costs of engineering changes based on new data not available at the start of construction for all projects under construction by Reclamation--especially those projects involving up-front cost sharing.

As you may know, the Act of September 21, 1959 (73 Stat. 584) allows the Secretary of the Interior to defer construction charges, if they cause an undue burden to the water users. Under that act, however, any amendatory contract must be approved by the Congress when it (1) lengthens the repayment period, and/or (2) involves a reduction in the total amount payable by the water users, and/or (3) is less advantageous to the Government than the existing contract.

If we can further assist you in this matter, please advise.

Sincerely yours,

C. Dale Duvall
Commissioner

Enclosures

Form 7-1316
(10-64)
Bureau of Reclamation

HEART DIVISION

WATER AND POWER RESOURCES SERVICE

[illegible]

[illegible] 700-440

MAR . 3 1980

Honorable Harry [illegible]
Mayor of Dickinson
City of Dickinson
Dickinson, North Dakota 58601

Dear Mayor [illegible]:

In accordance with Article 3b of Contract No. [illegible], dated July 11, 1979, between the city of Dickinson and the United States, the city has 30 days beginning March 3, 1980, to accept or reject the construction bid for the bascule gates to be installed on the existing spillway at Dickinson Dam. The bid opening for this major cost item of the water supply portion of the Dickinson Dam modification program was held in Dickinson on February 28, 1980. An abstract of the bids received is enclosed.

The total reimbursable cost, based on the apparent low bid for the bascule gates and our estimate for the remaining items at January 1980 price levels, is as follows:

Item	Cost
Bascule gates (apparent low bid)	$ 919,145.00
Land and rights	517,940.
Relocations	370,000.
Fish and wildlife facilities	22,000.
Minor contracts	55,435.
Engineering and administrative expense	160,435.
Total	$2,079,145.00

The attached repayment schedule has been prepared to reflect the new estimated contract obligation and the fiscal year 1980 interest rate of 7.21 percent. The higher cost and interest rate will require the beginning semiannual payment level to be about $90,000. This schedule uses the concept of increasing the beginning semiannual payment by $10,000 each 5 years. The repayment period under this schedule is 18 years. The maximum repayment period that can be allowed is 40 years.

original Ltr. carried to Dickinson by Bill [illegible] 3/3/80

[illegible]

Please review this information and furnish official notification of the city's decision to this office as soon as possible, but no later than April 2, 1980. Please provide a copy of your decision to the Project Manager, Missouri-Souris Projects Office, Water and Power Resources Service, P. O. Box 1017, Bismarck, North Dakota 58501.

If you have any questions concerning this matter, please contact either Project Manager Darrell Krull in Bismarck (telephone 701-255-4011) or William Crosby in Billings (telephone 406-657-6413).

Sincerely yours,

Joseph D. Marcotte, Jr.

Acting Regional Director

Enclosure

bc: Project Manager, Bismarck, North Dakota (w/enclosure)
UM-400, -200, 440 (w/enclosure)

WDCrosby:maj:2/20/1980

REVISED REPAYMENT SCHEDULE
CITY OF DICKINSON
Contract No. 9-07-60-WR052

Year	Semiannual Payment	Interest @ 7.21% Per Annum 1/	Principal	Estimated Contract Obligation 2/
				$2,439,146
1	$ 90,000	$ 43,966 3/	$ 46,034	2,393,112
	⋮	86,272	3,728	2,389,384
2		86,137	3,863	2,385,521
		85,998	4,002	2,381,519
3		85,854	4,146	2,377,373
		85,704	4,296	2,373,077
4		85,549	4,451	2,368,626
		85,389	4,611	2,364,015
5		85,223	4,777	2,359,238
	90,000	85,051	4,949	2,354,289
6	100,000	84,872	15,128	2,339,161
		84,327	15,673	2,323,488
		83,762	16,238	2,307,250
		83,176	16,824	2,290,426
8		82,570	17,430	2,272,996
		81,942	18,058	2,254,938
9		81,291	18,709	2,236,229
		80,616	19,384	2,216,845
10		79,917	20,083	2,196,762
	100,000	79,193	20,807	2,175,955
11	110,000	78,443	31,557	2,144,398
		77,306	32,694	2,111,704
12		76,127	33,873	2,077,831
		74,906	35,094	2,042,737
13		73,641	36,359	2,006,378
		72,330	37,670	1,968,708
14		70,972	39,028	1,929,680
		69,565	40,435	1,889,245
15		68,107	41,893	1,847,352
	110,000	66,597	43,403	1,803,949
16	120,000	65,032	54,968	1,748,981
		63,051	56,949	1,692,032
17		60,998	59,002	1,633,030
		58,871	61,129	1,571,901
18		56,667	63,333	1,508,568
		54,384	65,616	1,442,952
19		52,018	67,982	1,374,970
		49,568	70,432	1,304,538
20		47,029	72,971	1,231,567
	120,000	44,398	75,602	1,155,965
21	130,000	41,673	88,327	1,067,638
		38,488	91,512	976,126
22		35,189	94,811	881,315
		31,771	98,229	783,086
23		28,230	101,770	681,316
		24,561	105,439	575,877
24		20,760	109,240	466,637
		16,822	113,178	353,459
25		12,742	117,258	236,201
	130,000	8,515	121,485	114,716
26	118,852	4,136	114,716	0

Note: Repayment period negotiable up to 40 years.

1/ Fiscal year 1980 rate.
2/ Based on apparent low bid for bascule gates, January 1980 cost level for other items, and estimated interest during construction of $160,000.
3/ First payment includes 3 months interest (October 1, 1981 - December 31, 1981).

Form 7-1596
(10-66)
Bureau of Reclamation

HEART DIVISION

WATER AND POWER RESOURCES SERVICE

UM-440

MAR 24 1980

Honorable Henry Schank
Mayor, City of Dickinson
Dickinson, ND 58601

Dear Mayor Schank:

Please refer to our letter of March 5, 1980, notifying you of the apparent low bid for installation of the bascule gates on the existing spillway at Dickinson Dam. Project Manager Krull advised us that you need an extension on the 60-day period to review the costs and make a decision on the project. Since your next scheduled city commission meeting is to be on April 7, 1980, we agree to extend your review period to April 10, 1980. Please give official notification of your decision by April 10, 1980.

Sincerely yours,

James A. Rawlings
Acting ASSISTANT Regional Director

cc: Project Manager, Bismarck, North Dakota

HEART DIVISION

MAURICE R. HUNKE
Attorney at Law
P.O. BOX 1303
208 FIRST AVENUE EAST

September 4, 1980

U. S. Department of Interior
Water and Power Resources Service
Upper Missouri Region
P.O. Box 2553
Billings, Montana 59103

Attention: Mr. James A. Rawlings
Assistant Regional Director

Re: Dickinson Bascule Gate Project

Dear Mr. Rawlings:

Please refer to my letter of April 7, 1980, addressed to your attention in which I confirm that the Board of Commissioners of the City of Dickinson concurred in the acceptance of the apparent low bid in the above project. In that letter I also confirmed that the City Commissioners urged your agency ". . . to award the contract forthwith so that construction may commence as soon as possible."

As you undoubtedly may know, since April 1980, the Dickinson area has experienced a serious drought which has created an emergency condition for our municipal water supply. Pursuant to our water conservation ordinance, our citizens have been subject to severe water rationing restrictions and if the unfavorable weather conditions continue through this autumn and winter, we may be compelled to draw water from our sanitary sewage lagoon system for human consumption.

In addition to that emergency situation I have described, we have also recently been informed (but have not confirmed with you) that the working drawings for the above project have not yet been completed and that the only supplier which you will permit to furnish the Bascule gates to the contractor will not be able to deliver the Bascule gates until August of 1981 at the earliest. In view of all of these conditions, the Board of Commissioners at their regular meeting on September 2, 1980, decided to re-evaluate this project and have instructed me to request through this letter that the Water and Power ResourcesService should cease further work on this project until the City has had an opportunity to evaluate the following questions:

1. Particularly in view of the fact that an immense auxillary spillway under the Safety-of-Dams Program is now nearly completed, is there any longer a valid engineering or technical reason why the additional waterwe seek to store behind the dam must be accomplished by the use of Bascule gates or any other adjustable device? (The primary reasons why the City seeks a re-evaluation of this question

are that we have been informed that a permanent concrete structure to raise the spillway crest approximately 3.5 feet could be installed at substantially less cost in a lesser amount of time and may in fact strengthen the dam and would cause no operational problems. With Bascule gates or any other adjustable device, there is a risk of a malfunction, particularly with the breakup of ice in the spring runoff period, and if the malfunction should occur while the gates are in the lowered position, the City would find itself in the embarrassing position of not being able to store any additional water.)

2. If there is no longer any valid reason for installation of Bascule gates or other adjustable device, can a permanent device to store additional water be installed at substantially less cost than Bascule gates?

3. Can a permanent device be designed and installed in the same amount of time or less than the time required for installation of Bascule gates?

4. Can a permanent device be designed and installed within the existing congressional appropriation without additional substantial delay?

5. If a decision is made to install a permanent device, would the existing general contractor be willing to release the Water and Power Resources Service from its existing contract and, if so, at what additional expense, if any?

The City Commissioners realize that the above questions are serious ones and they invite your candid observations as to those questions to assist them in their re-evaluation of this project. The City of Dickinson finds itself in a desperate situation and needs a solution to its short-term water supply problems at theearliest possible date and at the least possible cost. We will appreciate the assistance of your Service in that regard.

Yours very truly,

MAURICE R. HUNKE
Dickinson City Attorney

MRH/mw

CC: Mr. D. L. Krull, Project Manager
Water and Power Resources Service
P.O. Box 1017
Bismarck, North Dakota 58501

Hon. A. E. Baumgartner, Mayor
Commissioners Ernest A. Bailey, LaVern Jessen,
Robert B. Baird, and Terry Askin
City Auditor James K. Gerou
City Engineer Don F. Cuskelly
Adm. Assistant Polly Prchal
Engineer R. D. Anderson

MAURICE R. HUNKE
Attorney at Law
1303
NUE EAST
DAK. 58
1-225-2335

January 6, 1981

U. S. Department of Interior
Water and Power Resources Service
Upper Missouri Region
P. O. Box 2553
Billings, Montana 59103

Attention: Mr. Joseph B. Marcotte, Jr.
Acting Regional Director

Re: Your File UM-440 832.-
Dickinson Bascule Gate Project

Dear Mr. Marcotte:

Please refer to my letter of September 4, 1980, addressed to your office to the attention of Mr. James A. Rawlings, Assistant Regional Director. In that letter the City of Dickinson Board of Commissioners had requested an opportunity to re-evaluate the above project for the various reasons specified in that letter.

This will now confirm that at their regularly scheduled public meeting on January 5, 1981, the City of Dickinson Board of Commissioners rescinded their prior action of September 2, 1980, and by motion unanimously passed have requested that the Water and Power Resources Service proceed as expeditiously as possible to the installation of and swift completion of the Bascule Gate project. Undoubtedly, you are already painfully aware of the fact that the City of Dickinson not only faces but is already in an emergency situation with regard to its raw water supply and although the Bascule Gate project appears to be so expensive as possibly beyond the capacity of the City of Dickinson to repay, this project seems to be the only solution which your Water and Power Resources Service is able to recommend as a temporary solution to our problem. The City Board of Commissioners now unanimously accept your recommendation and now ask only that the completion of the project be expedited.

Please accept and convey to your fellow workers our gratitude for your patience while we re-evaluated this matter. We look forward to the timely completion of the project so as to be able to save and impound any run-off which may occur in the spring of 1982 and possibly earlier.

Yours very truly,

MAURICE R. HUNKE
Dickinson City Attorney

MRH/mw

CC: As shown on page 2

CC: Mr. D. L. Krull, Project Manager
Water and Power Resources Service
P.O. Box 1017
Bismarck, North Dakota 58501

Hon. A. E. Baumgartner, Mayor
Commissioners Ernest A. Bailey, LaVern Jessen,
Robert B. Baird, and Terry Askin
City Auditor James K. Gerou
City Engineer Don F. Cuskelly
Adm. Assistant Polly Prchal
Engineer R. D. Anderson

Senator Murkowski. You may proceed with your analysis of the Bureau's position on the other legislation.

Mr. Duvall. Do you have any preference as to which ones?

Senator Murkowski. I beg your pardon?

Mr. Duvall. Do you have any preference as to——

Senator Murkowski. I do not care. You do anything you want. We have got S. 230 at least discussed, not resolved, but we will look forward to the input from the interested parties.

Why do you not go to S. 252 and S. 1704.

Mr. Duvall. OK.

Senator Murkowski. I would request, respectfully, that you summarize.

Mr. Duvall. I will do my best, Mr. Chairman, to summarize the comments.

Commencing first with S. 252, the Lake Andes-Wagner unit, we are pleased to advise you that we can acquiesce to the authorization of this project provided——

Senator Murkowski. What does "acquiesce" mean?

Mr. Duvall. Acquiesce would——

Senator Murkowski. In your sense.

Mr. Duvall. In our sense is that we have no opposition to the authorization of the project.

Senator Murkowski. Does OMB have any opposition?

Mr. Duvall. They have not completed their analysis yet. The acquiescence to authorization has the understanding that cost/benefit analysis has not yet been finalized.

Senator Murkowski. I thought there was a cost/benefit on this one.

Mr. Duvall. There is a cost/benefit analysis. It has been finalized in the Bureau of Reclamation——

Senator Murkowski. 1.06 to 1.

Mr. Duvall. It has been finalized in the Bureau of Reclamation, but it is constructed under the new principles and guidelines that were adopted by this administration in 1983, and this happens to be the first project to come forward subsequent to that time.

Those principles and guidelines establish standards and procedures for use by Federal agencies in formulating and evaluating alternative plans for water and related land resources implementation studies. They further provide that departures in an individual study from these guidelines are to be documented and justified in the study report.

Chapter II of those guidelines, which address national economic development procedures, indicates the procedures for evaluating any of the effects of alternative plans. When an alternative procedure provides a more accurate estimate of a benefit, the alternative estimate may also be shown in the procedures as documented. Those alternative procedures were employed in order to reflect the alternative crops that are going to be produced in the Lake Andes-Wagner Unit. Being the first project that has been submitted under the new guidelines, it is under some scrutiny at OMB.

Senator Murkowski. I understand sometimes the definitions or applications are drafted by staffers or attorneys who cannot get to the point. You have indicated that the administration "acquiesces."

My question to you, sir, is because of the alternative benefit analysis to establish the favorable cost/benefit ratio for the project, is such an alternative allowed under the principles and standards of Federal water projects?

Mr. DUVALL. Yes, it is. It is provided for in those principles.

Senator MURKOWSKI. So we can assume then that what we are saying here is that the Bureau of Reclamation and the Department of Interior support this project?

Mr. DUVALL. That is correct.

Senator MURKOWSKI. And OMB has not been heard from yet.

Mr. DUVALL. I should say that the Secretary has not signed off on the official document at this point.

Senator MURKOWSKI. The Secretary of Interior—I understand that. And we will hear from OMB and they will probably be negative, as usual. Is that what you would expect?

Mr. DUVALL. I think that will depend on the outcome of the discussions relative to the procedures that we use and what we are referring to as the customized procedures, the alternative guidelines.

Senator MURKOWSKI. Which means they will probably be negative. But what you are reassuring me is that we are not going to go back and reanalyze at least the application of the analysis process and come up with a different conclusion, at least from your shop or from the Interior?

Mr. DUVALL. We are making no attempt to go back and change the guideline.

[The prepared statement of Mr. Duvall on S. 252 follows:]

Statement of C. Dale Duvall, Commissioner, Bureau of Reclamation, Department of the Interior, Before the Senate Subcommittee on Water and Power, Committee on Energy and Natural Resources on S. 252, to authorize the Secretary of the Interior to construct, operate, and maintain the Lake Andes-Wagner Unit, Pick-Sloan Missouri Basin Program, South Dakota

July 22, 1986

Mr. Chairman, I am here today to testify on S. 252.

We are pleased to advise that we can acquiesce to authorization of this project, provided it is understood that cost/benefit analyses has not yet been finalized. It is the expectation of the Department that if this project is authorized, we will proceed under current cost-sharing policies and procedures.

The Bureau has forwarded a Planning Report to the Secretary in which it recommends the authorization of Lake Andes-Wagner. Under water development project guidelines traditionally used by Federal agencies the benefit/cost ratio of the project is less than one. While we have proposed an alternative benefit analysis under which the project benefits would equal its cost, this approach has not been finally reviewed or accepted by the Administration for investment decision purposes. Thus, while we believe that this project may produce net national economic benefits in excess of its costs, the final outcome of our benefit/cost analysis is still uncertain.

My testimony will describe the project as defined to date and the status of our economic and environmental studies.

The Lake Andes-Wagner Unit as presently defined would be developed as a part of the Pick-Sloan Missouri Basin Program. The Unit is located in Charles Mix County, which is in the south central portion of South Dakota, and it is bordered on the west side by Lake Francis Case on the Missouri River.

The project would irrigate 45,000 acres of dry farmed land with sprinkler systems, primarily center pivots. The annual diversion from the Missouri River would be 94,000 acre-feet. This is approximately 1/2 percent of the annual flow at Fort Randall Dam.

Water would be lifted 230 feet by the Main Pumping Plant, which is located on the North Bay arm of Lake Francis Case, into the distribution system for delivery to project lands. A system of surface and subsurface drains would remove excess water and return flows from the project area. An irrigation management system is a part of the plan to limit application of water thus increasing water use efficiencies. Installation of subsurface drains would be deferred until needed, which could range from 5 to 40 years.

Rainfall in the study area is neither adequate nor timely to achieve the maximum productive capacity of the land. Hardly a growing season passes without an extended dry period. These seasonal drought periods do not generally result in complete crop failure; but rather a reduction in volume and quality of production. Occasionally, more extended droughts are experienced in this area. Irrigation development would provide an adequate and timely moisture supply which in turn would stabilize and increase agricultural production.

Members of the Yankton Sioux Tribe make up 20 percent of the population of the immediate project area and own about 3.8 percent of the lands in the proposed project area. Tribal members will benefit from the unit by: receiving direct project benefits of irrigation on approximately 1,700 acres which will be subject to deferred repayment of capital costs under the Leavitt Act; providing up to 50 percent of the unskilled and 30 percent of the skilled and semi-skilled workers during construction; as well as by the creation of an estimated 50 agricultural and project-related job opportunities after construction is completed.

Under the existing project design, wildlife habitat effects of the project would be fully mitigated. The area's wetlands, woodlands, and grasslands presently provide habitat and life support for a variety of wildlife including waterfowl, upland birds and white-tailed deer. A study team consisting of Representatives from the South Dakota Department of Game, Fish and Parks; the

Bureau of Reclamation; and, the Fish and Wildlife Service have performed an evaluation of the wildlife habitat. They identified 650 acres of wetland, 4,290 acres of grassland, and 220 acres of woodland habitat that would be adversely impacted by the project.

The mitigation plan to fully compensate for the lost habitat would create 2,180 acres of new grasslands and 175 acres of new woodlands, and would improve 949 acres of existing wetlands.

As a fish enhancement measure, a 50-acre fish rearing pond and related water supply laterals will be built on North Bay to improve the fisheries in Lake Francis Case. Management of the rearing pond is dependent on South Dakota's annual fishery management program for the mainstem Missouri River reservoirs. The reimbursable costs of the rearing pond will be paid by the South Dakota Department of Game, Fish and Parks.

While not presently included, the project offers potential for recreation development. Local residents have formed the Restore Lake Andes Association to facilitate restoration of Lake Andes as a site for water based recreation. However, ownership of the lakebed is currently in litigation between the State of South Dakota and the Yankton-Sioux Tribe. Subsequent to resolving the litigation, the recreation potential of Lake Andes will be considered. Water levels of Lake Andes will be enhanced and maintained by use of the project supply works during off-peak periods.

The incremental investment outlay for this project, accounting for the future drainage expenditures and interest during construction, is about $133.8 million. This amounts to $2,973 per acre and will benefit about 173 farmers.

Repayment by the irrigators could recover the $133.8 million mentioned above, plus power costs already expended, in about 34 years. It would occur at a rate of about $109 per acre per year. The present value of this flow at 8 3/8 percent is about $1,034 per acre after allowing for a 2-year development period. Thus, the irrigators would be sharing about 35 percent of the incremental costs. This cost-sharing estimate could decrease if the repayment period is increased or if the irrigator's ability to pay for project capital investment were to diminish.

In addition to the $109 per acre per year repayment of project capital, irrigators would have sprinkler investments of about $475 per acre. Operation and maintenance costs are $24 per acre per year.

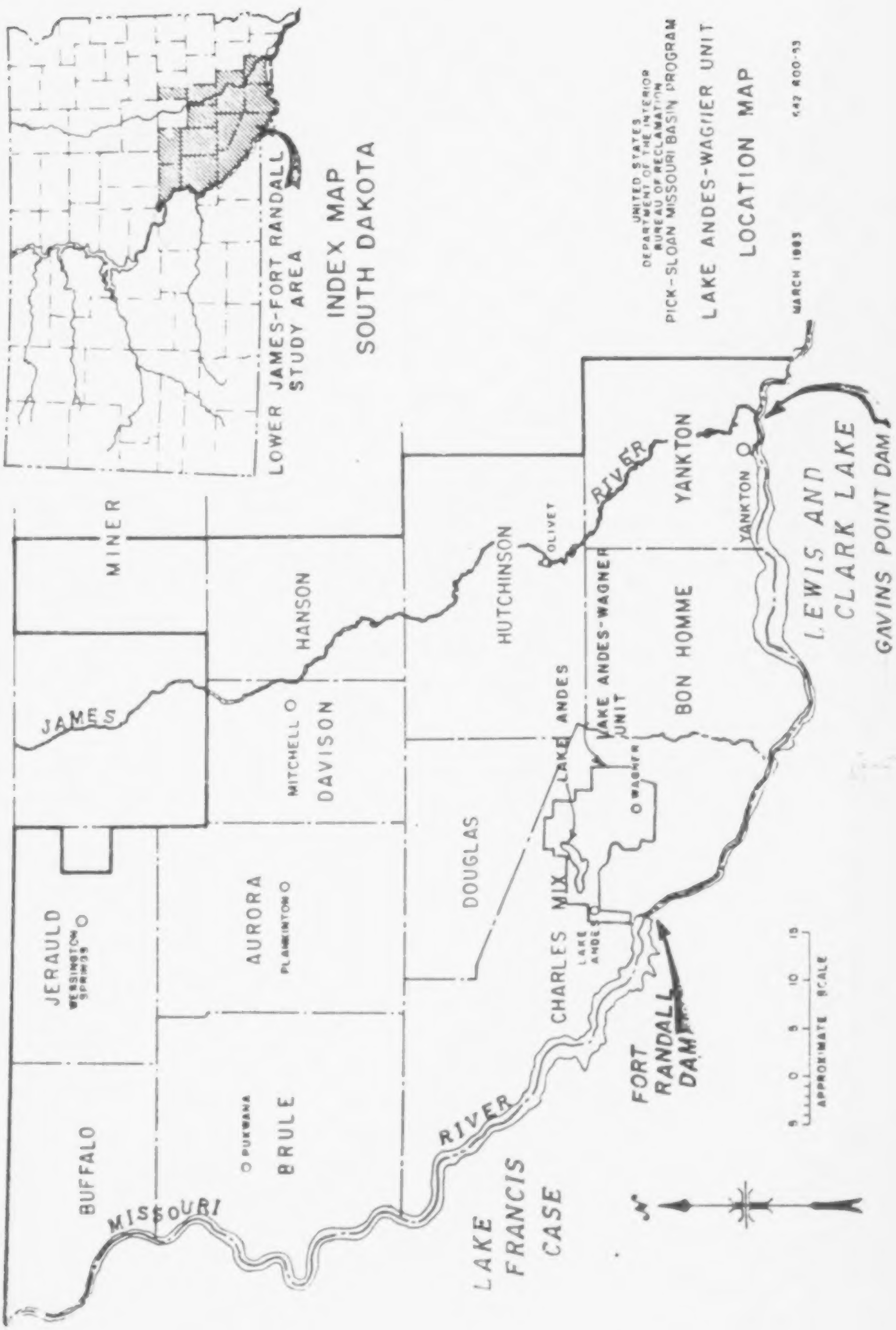
We estimate that a large percentage of the crops grown would be crops that are presently in surplus and subject to Agriculture Department price supports. Sixty to 75 percent of the acreage will produce corn primarily for on-farm use as cattle feed.

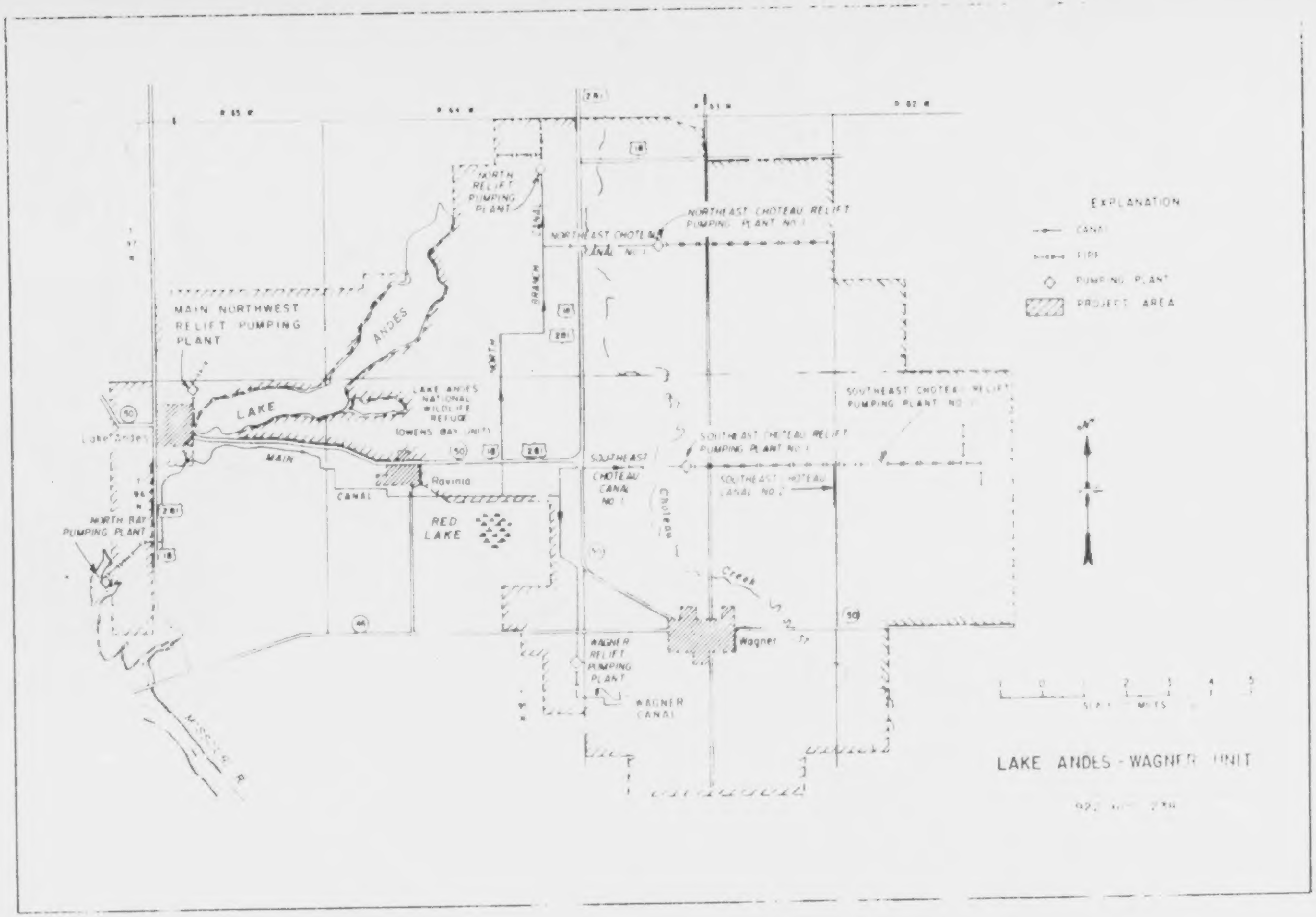
Total nominal construction costs of the Lake Andes-Wagner Unit is $148,520,000. This excludes interest during construction. All construction costs are allocated to irrigation except for the fish rearing pond. Thus, the reimbursable construction costs are $148,210,000 for irrigation and $77,500 for fish and wildlife. The remaining $232,500 of construction costs are nonreimbursable fish and wildlife costs.

A portion of the $148,210,000 irrigation reimbursable costs are to be deferred under the Leavitt Act authority. This amount is $6,386,000 representing the 3.8 percent of the lands that are Indian-owned.

Indications are that the estimated annual repayment capacity of the non-Indian lands is $133 per acre. This amount appears to be adequate to pay all O&M costs and repay the remaining reimbursable irrigation costs in 34 years without assistance from the Pick-Sloan Missouri Basin Program power revenues.

This concludes my testimony on S.252. I would be happy to answer any questions that you may have.


UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
PICK-SLOAN MISSOURI BASIN PROGRAM
LAKE ANDES-WAGNER UNIT
LOCATION MAP
MARCH 1963
442 400-93
INDEX MAP
SOUTH DAKOTA
LOWER JAMES-FORT RANDALL STUDY AREA
MINER
JAMES
HANSON
MITCHELL
DAVISON
HUTCHINSON
OLIVET
RIVER
YANKTON
YANKTON
JERAULD
WESSINGTON SPRINGS
AURORA
PLANKINTON
DOUGLAS
LAKE ANDES
LAKE ANDES-WAGNER UNIT
LAKE ANDES-WAGNER
BON HOMME
WAGNER
CHARLES MIX
LAKE ANDES
LEWIS AND CLARK LAKE
GAVINS POINT DAM
BUFFALO
BRULE
PUKWANA
MISSOURI
RIVER
LAKE FRANCIS CASE
FORT RANDALL DAM
5 0 5 10 15
APPROXIMATE SCALE
N


EXPLANATION
CANAL
PIPE
PUMPING PLANT
PROJECT AREA
MAIN NORTHWEST RELIEF PUMPING PLANT
NORTH RELIEF PUMPING PLANT
NORTHEAST CHOTEAU CANAL NO. 1
NORTHEAST CHOTEAU RELIEF PUMPING PLANT NO. 1
BRANCH CANAL
LAKE ANDES
LAKE ANDES NATIONAL WILDLIFE REFUGE (OWENS BAY UNIT)
Lake Andes
MAIN CANAL
Ravinia
RED LAKE
NORTH BAY PUMPING PLANT
SOUTHEAST CHOTEAU CANAL NO. 1
SOUTHEAST CHOTEAU RELIEF PUMPING PLANT NO. 1
SOUTHEAST CHOTEAU RELIEF PUMPING PLANT NO. 2
SOUTHEAST CHOTEAU CANAL NO. 2
Choteau Creek
Wagner
WAGNER RELIEF PUMPING PLANT
WAGNER CANAL
MISSOURI R.
R 65 W
R 64 W
R 63 W
R 62 W
50
18
281
46
0 1 2 3 4 5
SCALE MILES
LAKE ANDES - WAGNER UNIT

Senator MURKOWSKI. Thank you. S. 1704, please. I have a question for the record, I am told, simply because I do as I am told, I guess.

During the subcommittee's field hearing in Wagner, concern was expressed about the possibility of sellenium contamination of irrigation return flows from the Lake Andes water project. Does the Bureau conduct studies of potential hazards of return flow from irrigation projects?

Mr. DUVALL. Yes, we do.

Senator MURKOWSKI. Has such a study been conducted for Lake Andes-Wagner?

Mr. DUVALL. On the Lake Andes-Wagner Unit there have been studies conducted on agricultural return flows, yes.

Senator MURKOWSKI. What is the conclusion, do you know?

Mr. DUVALL. The conclusion is that there is a part of the system where it may be necessary to install drain systems in the future. Present indications are that because of the percolation of the soils, the installation of drains probably would not commence at any site in less than 5 years after initial delivery of water, and it may be possible that it would be deferred as long as 40 years.

Senator MURKOWSKI. I commend you. You are very well briefed, Mr. Commissioner.

Mr. DUVALL. Thank you.

Senator MURKOWSKI. S. 1704.

Mr. DUVALL. S. 1704 is the North Loup division bill to authorize an increase in the appropriation ceiling, and the administration supports that requested increase. I think we also agreed in almost every respect with all the testimony that was offered by the previous witnesses.

[The prepared statement of Mr. Duvall on S. 1704 follows:]

STATEMENT OF C. DALE DUVALL, COMMISSIONER, BUREAU OF RECLAMATION DEPARTMENT OF THE INTERIOR BEFORE THE SENATE SUBCOMMITTEE ON WATER AND POWER, COMMITTEE ON ENERGY AND NATURAL RESOURCES ON S. 1704, TO AUTHORIZE AN INCREASE IN THE APPROPRIATION CEILING FOR THE NORTH LOUP DIVISION, PICK-SLOAN MISSOURI BASIN PROGRAM - NEBRASKA

JULY 22, 1986

Mr. Chairman and members of the subcommittee. I am appearing today to present the views of the Department of the Interior on S. 1704, which would authorize an increase in the appropriation ceiling for the North Loup Division, Pick-Sloan Missouri Basin Program, Nebraska.

The North Loup Division of the Pick-Sloan Missouri Basin Program, located in central Nebraska, was authorized on October 20, 1972, by Public Law 92-514. The project consists of Calamus Dam and Reservoir, Davis Creek Dam and Reservoir, Kent Diversion Works, Geranium Pumping Plant, and 375 miles of canals and laterals. Benefits will include irrigation of 53,000 acres in the Twin Loup Reclamation District and the Twin Loups Irrigation District, plus recreation and fish and wildlife enhancement.

The North Loup Division is over 50 percent complete. Calamus Dam was completed in October 1985 and the 3-year initial filling period has begun. All sections of the Mirdan Canal should be completed this construction season. The Mirdan pipe distribution system will be completed this summer and the Geranium System should be completed in the spring of 1987. The district's Operations Headquarters Building should be completed in December 1986. Operation and maintenance during construction, a contractual responsibility of the Bureau of Reclamation, will be performed by the Twin Loup Reclamation District under two separate contracts with the Bureau.

The original authorized appropriation ceiling of $79.5 million (based on January 1972 price levels) has been indexed to the current appropriation ceiling of $193.2 million (based on July 1984 price levels). The current comparable project cost estimate is $333.9 million and exceeds the appropriation ceiling by $140.7 million.

Those changes include redesign of Calamus and Davis Creek Dams to accommodate contemporary hydrologic data and analysis and state-of-the-art design principles; concrete lining, stabilization, and realignment of canals; addition of a more comprehensive drainage system; and addition of a fish hatchery and other fish and wildlife enhancement facilities. A table listing the estimated cost increases and a brief explanation of each of the increases for individual project features or catagories is attached to my written testimony.

The increase in the authorized appropriation ceiling is required during this congressional session in order to continue the ongoing construction activities on the division in a cost effective and efficient manner. No major contracts can be awarded until the ceiling is increased. Without the increase, completion of the project, as authorized, would be delayed and the full range of project benefits would not be realized.

If the requested appropriation ceiling increase is not approved this session, and appropriations are not included in the Fiscal year 1987 Energy and Water Development Appropriations bill, the jobs of 10 Reclamation employees would be terminated in Fiscal Year 1987 and about 80 more over the next several years. In addition, a substantial number of contractors employees would be affected. If the termination of staff members were to occur, and at some point in the future the reauthorization was approved, it would be necessary to restaff. However, the cost of severance for those present employees and of recruitment and relocation of new employees would be high and, based on past experience, it also would be extremely difficult to hire experienced staff in such a location for a restart with only 3 to 4 years of remaining construction.

The Department of the Interior supports the proposed legislation and urges its immediate enactment.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions you may have.

Attachment

ATTACHMENT

The increase in the estimated project cost is largely due to design changes that were necessary since the original authorization. They include the following:

Feature/Category	Amount(s) (millions)	Explanation of Increase
Calamus Dam & Reservoir	36	Changes to accommodate new inflow design flood, increased outlet capacity, size and configuration of dam, added slurry trench, chimney drains, and instrumentation.
Davis Creek Dam & Reservoir	18	Changes to accommodate new inflow design flood. Also, changes in spillway location, increase in dam size, addition of instrumentation.
Mirdan Canal System	27	Concrete lining of main supply canal, increase in carrying capacity, cut-slope layback for safety and maintenance, and other related changes.
Geranium, Scotia, Kent & Fullerton Canal Systems	23	For canal stabilization and protection by gravel on curves and highfalls, cut-slope and concrete lining of Kent Canal.
Geranium, Scotia, Fullerton & Elba Lateral System	19	Alignments and lengths varied. Smaller laterals (below 27 ft/sec) are in pipe. Advantages include less O&M, better water management, and reduced water loss.
Subsurface Drains	10	Requirements restudied in 1982; added more comprehensive drain system as result of study.
Fish and Wildlife Enhancement Facilities	6	Addition of fish hatchery and various other facilities. These facilities will be funded on a 75/25 Federal/Non-Federal cost-sharing basis.
Miscellaneous Adjustments	2	
Total	141	

Senator MURKOWSKI. H.R. 5028, lower Colorado water supply. We have not had a witness on that subject as yet.

Mr. DUVALL. I have a statement which I presume will be entered for the record.

Senator MURKOWSKI. It is entered into the record.

Mr. DUVALL. To summarize, the statement indicates that the Department of the Interior supports the legislation, but would prefer language that would allow for staged development with cost indexing because the need for the full 10,000 acre-feet per year will not be realized in the near future. If all five wells were drilled at this time, the water users would be required to repay the costs of a supply that is not presently needed. The Department recommends that the project be authorized, and it is the expectation of the Department that if authorized we will proceed under current cost-sharing policies and procedures.

[The prepared statement of Mr. Duvall on H.R. 5028 follows:]

Statement of C. Dale Duvall, Commissioner, Bureau of Reclamation, Department of the Interior, Before the Senate Subcommittee on Water and Power, Committee on Energy and Natural Resources on H.R.5028 to authorize the Secretary of the Interior to construct, operate, and maintain the Lower Colorado Water Supply Project, California

July 22, 1986

Mr. Chairman, I am pleased to appear before your committee today to testify in support of H.R.5028.

The Lower Colorado Water Supply Project is an extension and refinement of the existing project authorized by the Boulder Canyon Project Act. H.R.5028 would require exchange agreements among existing project users and certain entities along the Colorado River. The bill would further allow for improved efficiency of project operation by utilizing seepage water. The Lower Colorado River Water Supply Project would pump water from the aquifer beneath the All-American Canal and discharge it into the Canal in exchange for water which is currently diverted or pumped from the Colorado River floodplain upstream of the Canal diversion.

The purpose of the Lower Colorado Water Supply Project is to meet the water supply needs, in excess of contracted amounts, of certain nonagricultural water users along the Colorado River in California. The Central Arizona Project (CAP) became operational in 1985. As Arizona begins using its full entitlement of Colorado River water within the next five years, surplus water presently being used by water users in California will no longer be available. California's apportionment of Colorado River water is fully allocated. A water-shortage condition would require the Secretary of the Interior to enforce termination of noncontract use to meet existing contracts. However, through an exchange agreement with a present water user, it would be possible to provide these users in California with a replacement supply. The project would provide a means for those water users to contract for the use of up to 10,000 acre-feet of Colorado River water annually through an exchange agreement with a non-Federal entity.

The water users in California include the city of Needles, the town of Winterhaven, the Bureau of Land Management (BLM), and various private water users. Needles has a water right to 1,500 acre-feet of annual diversion. Needles is using water in excess of its present water right. Winterhaven has a water right; however, its full entitlement under that right has not been resolved. The BLM has leased land to concessioners for recreational purposes which require a water supply. The BLM has a Secretarial Reservation which sets aside up to 1,000 acre-feet per year of surplus Colorado River flows. That reservation will be of little or no value as soon as the CAP becomes fully operational because surplus flows will be unlikely. The private uses amount to about 350 acre-feet per year.

The potential project considered in H.R.5028 has been under investigation for four years to identify and examine alternative solutions. Study projections for future water needs of the water users indicate that, by the year 2020, over 5,500 acre-feet per year of consumptive use will be required in excess of present water rights. Due to the uncertainty in forecasting population growth, a plan has been formulated to allow for staged development, increasing in capacity up to 10,000 acre-feet per year as future needs develop.

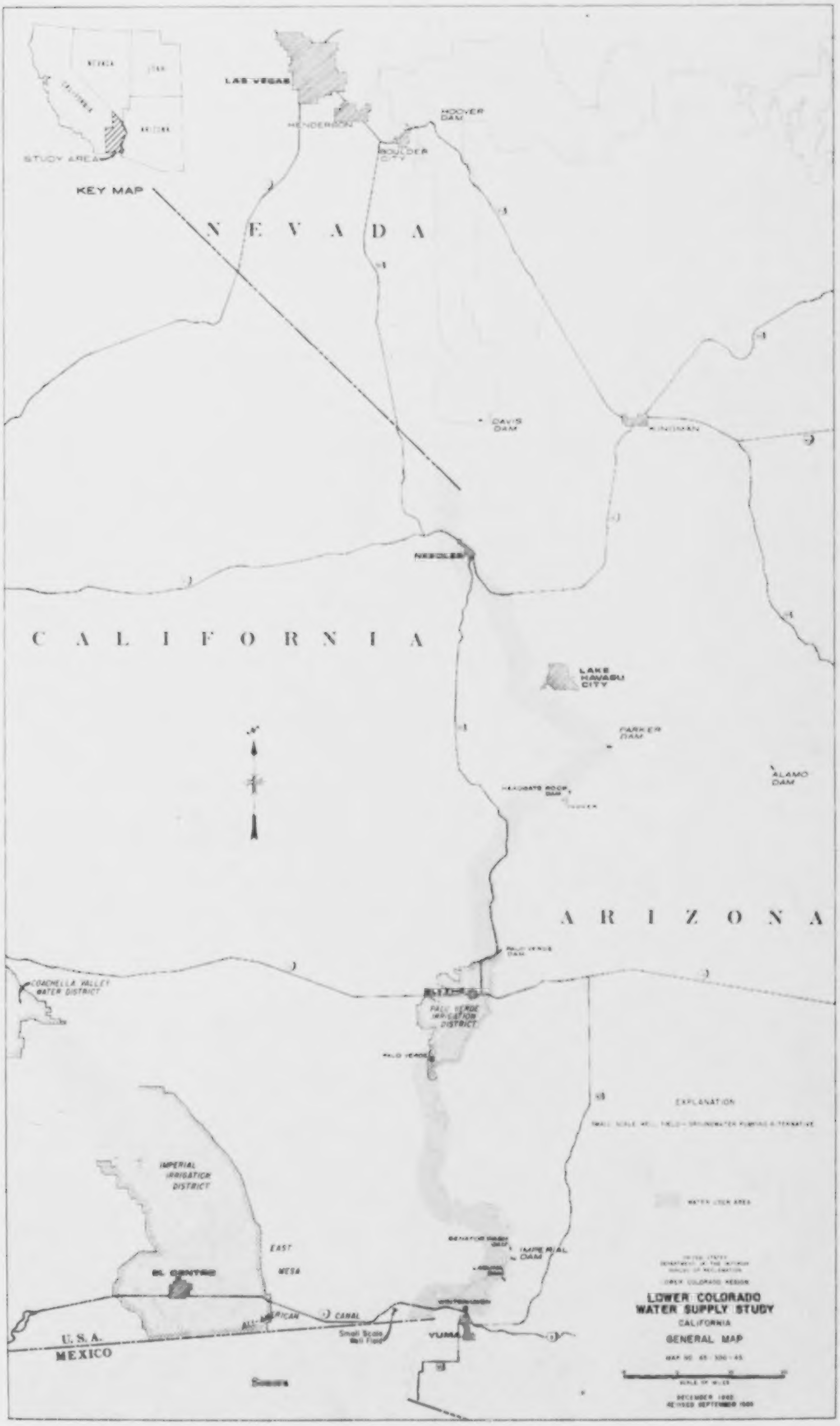
A draft Planning Report/Environmental Assessment was completed in December 1985 and distributed for review and comment by local interests. That report will be finished in the near future. Preliminary results are only available at this time. However, the preliminary results of the analyses indicate that development of a well field could be economical and feasible. The final report will identify the ratio of benefits to costs but preliminary indications are that it will be well over unity.

The principal features of the small-scale well field include two to five wells and a discharge pipeline to the All-American Canal. An exchange agreement with an All-American Canal user would be necessary. The initial stage of development would be two wells, each of capacity 3.2 cubic feet per second, drilled to a depth of 420 feet. The total estimated cost, including all five wells is $1,657,000, based on January 1985 prices. The appropriation ceiling in the legislation is $1.8 million without indexing provisions. With staged construction of up to five wells as the need develops, cost indexing provisions would be appropriate to allow for the potential increased costs of construction at a future date. We recommend the bill be modified to provide for indexing.

In accordance with the Water Supply Act of 1958, project costs for municipal and industrial purposes would be repaid, with interest. In our opinion, the intent of Congress is to include the domestic water users in the repayment of project costs by non-Federal interests. Therefore, it is recommended that Section 2.(a)(2) and Section 3 of the bill be modified to state that domestic water users would contract and repay their share of project costs at the same rate as the municipal and industrial interests.

Since water is an indispensable commodity, the assured supplies of contract water would relieve a serious concern of the affected individuals and communities and would provide a more secure and stable economic environment. The first stage of the project could be constructed within one year after receiving construction authorization and funding. The additional wells could be drilled as the need develops. A small-scale well field plan would provide the most immediate solution to the water supply problems and needs of the water users.

The Department of the Interior supports the legislation but prefers language that would allow for staged development with cost indexing because the need for the full 10,000 acre-feet per year will not be realized in the near future. If five wells were drilled at this time, the water users would be required to repay the costs of a supply that is not presently needed. The Department recommends that the project be authorized. It is the expectation of the Department that, if authorized, we will proceed under current cost-sharing policies and procedures. I will be happy to answer any questions that you may have about this matter.


NEVADA
UTAH
CALIFORNIA
ARIZONA
STUDY AREA
KEY MAP
LAS VEGAS
HENDERSON
HOOVER DAM
BOULDER CITY
N E V A D A
DAVIS DAM
KINGMAN
NEEDLES
C A L I F O R N I A
LAKE HAVASU CITY
PARKER DAM
ALAMO DAM
HEADGATE ROCK DAM
PARKER
A R I Z O N A
PALO VERDE DAM
COACHELLA VALLEY WATER DISTRICT
BLYTHE
PALO VERDE IRRIGATION DISTRICT
PALO VERDE
EXPLANATION
SMALL SCALE WELL FIELD – GROUNDWATER PUMPING ALTERNATIVE
WATER USER AREA
IMPERIAL IRRIGATION DISTRICT
EAST MESA
SENATOR WASH DAM
IMPERIAL DAM
LAGUNA DAM
EL CENTRO
ALL-AMERICAN CANAL
WINTERHAVEN
Small Scale Well Field
YUMA
U.S.A.
MEXICO
Sonora
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
LOWER COLORADO REGION
LOWER COLORADO WATER SUPPLY STUDY
CALIFORNIA
GENERAL MAP
MAP NO. 45-300-45
0 10 20
SCALE OF MILES
DECEMBER 1982
REVISED SEPTEMBER 1983

Senator **Murkowski**. Fine. I would request that you submit that proposed language for the record that you anticipate, because you indicated that you——

Mr. **Duvall**. For the staged development?

Senator **Murkowski** [continuing]. Wanted the staged development, which certainly sounds reasonable, and subject to our panel who will be addressing that.

I want to thank you, Mr. Commissioner. I think you are well informed on the subject, and I understand the difficult parameters that you have to work under. I wish you a good day and invite you to stay with us for panels 3 and 4.

Panel 3, Mr. Dayle Williamson, director of natural resources, Lincoln, NE, Office of the Governor; and Mr. Robert P. Will, attorney at law, Colorado River Board.

Please proceed, gentlemen.

STATEMENT OF DAYLE E. WILLIAMSON, DIRECTOR OF NATURAL RESOURCES, STATE OF NEBRASKA, LINCOLN, NE

Mr. **Williamson**. Mr. Chairman, I am Dale Williamson, director of natural resources for the State of Nebraska, and I am representing Gov. Robert Kerrey here this morning.

I have submitted my statement for the record. In addition, also a letter to you, Mr. Chairman, from Governor Kerrey noting his support for S. 1704.

My responsibility in the State of Nebraska is to work on water projects, and this particular project, the North Loup project, is a very important project to us. It is a very important project to our future water management in the State of Nebraska, and we certainly urge your subcommittee's action to approve this legislation so we can move on to completion of the North Loup project.

Thank you very much.

[The prepared statements of Mr. Williamson follow:]

STATEMENT TO THE WATER & POWER SUBCOMMITTEE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES

by Dayle E. Williamson, Director of Natural Resources, State of Nebraska, July 22, 1986.

Chairman Murkowski, and Members of the Subcommittee on Water and Power, I am Dayle Williamson, Director of Natural Resources for the State of Nebraska. I am here representing Governor Robert Kerrey. If the hearing had been held later in the day, Governor Kerrey would have appeared before you, but due to a long-standing early morning commitment in Chicago, the schedule was just too tight.

I would point out that on July 11, 1986, Governor Kerrey sent a letter to you Mr. Chairman, assuring you of his strong support for an increase in the appropriations ceiling of the North Loup Project. I have attached that letter to my statement and ask that it be made part of the record.

I will not attempt to restate the points brought out in Governor Kerrey's letter, but I will restate the strong state government support the North Loup Project has had and no doubt will continue to have. At the time the project was authorized in 1972, it was listed as a very key element in a long range water management plan for the State of Nebraska. After fourteen years, that statement still rings true. A number of us had the opportunity to participate in the dedication of the Calamus Dam on July 3rd and 4th of this year. This gave us an excellent first hand view of the project and certainly reinforced our thought about the need to complete this project.

I consider action to authorize an increase in the appropriation ceiling for the North Loup Division urgent. On several occasions, Bureau of Reclamation officials have told me that no additional contracting can take place until the ceiling is raised. We are most hopeful the project can be completed without delay on schedule and would ask for your Subcommittee's full consideration of this request.

We thank you for scheduling this hearing and giving us an opportunity to appear and assure you of our strong and continuing support for the North Loup Project.

STATE OF NEBRASKA
ROBERT KERREY • GOVERNOR

July 11, 1986

The Honorable Frank H. Murkowski
Chairman
Subcommittee on Water and Power
Committee on Energy and Natural Resources
Washington, D.C. 20510

Dear Senator Murkowski:

Thank you for your invitation to participate in the hearing on S.1704, a bill to authorize an increase in the appropriation ceiling for the North Loup Project in Nebraska. I must send my regrets as I have a long-standing commitment in Chicago on the morning of July 22, 1986.

I do want to take this opportunity to commend you for calling the hearing and I assure you of my strong support for an increase in the appropriation ceiling for the North Loup Project.

While we all must be cognizant of cost-containment measures, the North Loup Project merits congressional support for the additional appropriation. There are a number of factors that have caused cost increases over and above the typical inflationary increase on this project. Perhaps foremost among them is the dam safety issue. For example, the volume of the fill for the Calamus Dam has grown from 4.3 million cubic yards to 8.0 million cubic yards. At the same time, the storage capacity of the dam has decreased slightly.

The yet to be constructed Davis Creek Dam will also experience a similar embankment increase, from 2.8 million cubic yards to 3.7 million cubic yards. In addition to the fill increases, a number of other essential, but costly safety measures have been installed in the Calamus Dam and no doubt will be installed in the Davis Creek Dam when constructed.

The other cost increase features include concrete lining for surface canals and underground conveyance systems. In building a modern irrigation project with water use efficiency in mind, the so called add-on features are very necessary. As we all well recognize, much greater emphasis is now placed on water conservation than was placed on that need in 1972 when the project was authorized. The end result of the extra investment in the project will make possible a far superior project that meets today's needs. The completed project will become an integral part of Nebraska's long-range water management plan.

OFFICE OF THE GOVERNOR, BOX 94848, LINCOLN, NEBRASKA 68509-4848, PHONE (402) 471-2244
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

I must admit approaching this request for additional federal funding with a certain amount of apprehension and concern. A strong effort must be made to contain the federal budget and each expenditure must be carefully considered. In the case of the North Loup Project, the additional investment required to complete a partially completed project is sound, and I certainly encourage your subcommittee's full support.

I have asked Dayle Williamson, my Director of Natural Resources, to attend your subcommittee hearing and present oral testimony to indicate Nebraska's strong support for the appropriations ceiling increase for the North Loup Project. In case your subcommittee has questions, he will also be available to answer them.

Thanks again for your invitation and I'm sorry I can't be with you.

Sincerely,

Robert Kerrey
Governor

cc: Senator Zorinsky
Senator Exon

Senator MURKOWSKI. Thank you very much for your statement.

Let me proceed with a couple of questions that I want to pose at this time. The Bureau of Reclamation customarily turns projects over to local sponsors for their operation and maintenance, and there is no provision in the House bill for such action. Is there a local entity that would operate and maintain the project? If so, do you believe the bill should be amended to specifically permit such action? Or is it sufficient the way it is?

Mr. WILLIAMSON. There certainly is a local entity that will operate and maintain the project.

Senator MURKOWSKI. OK. This question should be asked, I have the wrong witness here.

Mr. WILLIAMSON. I was wondering about that, because it was a new question to me, but we do have a district set up.

Senator MURKOWSKI. That is my fault.

Well, we will just do it correctly, then. We will listen to Mr. Will. If you will listen to Mr. Will, I will, too, and we will proceed. That is what happens when Russ leaves.

Please proceed, Mr. Will. I will brief you later, Russ.

STATEMENT OF ROBERT P. WILL, COLORADO RIVER BOARD OF CALIFORNIA

Mr. WILL. Thank you, Mr. Chairman.

I would like to submit my statement for the record and make one quick comment. The Colorado River Board of California does support H.R. 5028 with a proposed amendment. There has been some concern expressed by the Cachean Indian Reservation, which is located some 5 miles east of the proposed well field. It is our feeling in discussions with representatives of the tribal group that there should be some protection afforded for any water rights which they may have in the area. As a part of our statement we have proposed an amendment with regard to water rights, and we ask that that be considered by the committee.

[The prepared statement of Mr. Will follows:]

Statement of the

Colorado River Board of California

on H.R. 5028
The Lower Colorado River Water Supply Act
to the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate
July 22, 1986

The Colorado River Board of California appreciates this opportunity to state its support of H.R. 5028, the Lower Colorado River Water Supply Act.

There are individuals, communities, and recreational interests located along the Colorado River in California that have long used river water for residential, municipal, and recreational purposes but that do not have Colorado River water rights or do not have sufficient rights to meet their present and future needs. These noncontract water users will shortly be required to terminate their Colorado River use unless another supply can be provided for them. These include recreational lands leased from or operated by the U.S. Bureau of Land Management, the town of Winterhaven, and the City of Needles which uses water in excess of its rights and, thus, will be required to curtail its excess use without a supplemental supply.

The rights of the Colorado River Basin states and individual entities to Colorado River water are governed by documents collectively referred to as the "Law of the River." The principal components establishing California's apportionment of river water are the Colorado River Compact of 1922 and the U.S. Supreme Court's 1964 Decree in Arizona v. California. Water deliveries to entities within California and the other Lower Basin states are made pursuant to water contracts with the Secretary of the Interior, as required by the Boulder Canyon Project Act of 1928.

California's rights and priorities to Colorado River water belong to Indian Reservations, the major public water agencies such as the Imperial Irrigation District and The Metropolitan Water District of Southern California, and a small number of "miscellaneous present perfected rights" holders. These are long-established priorities and rights which collectively total up to more than the river water apportioned to California in Arizona v. California.

In Arizona v. California, California received a basic apportionment of 4.4 million acre-feet per year of Colorado River water plus 50 percent of any surplus river water. California's Colorado River use at that time was about 5.0 million acre-feet per year and remains nearly that today. Under Federal criteria governing river operations, California has been allowed all the river water that it could beneficially use until the Central Arizona Project (CAP) commenced operation. After the CAP began making deliveries in December 1985, California has been and will be limited to its annual 4.4 million acre-feet of basic apportionment except in years of surplus river flow as is occurring this year.

Concerns about a water supply for noncontract users led the Colorado River Board of California to work with the Secretary of the Interior on a Federal-State task force in 1975 that investigated the problem and recommended a course of action for development of a water supply. This was followed by the Congress, in 1980, authorizing the Secretary of the Interior to conduct feasibility studies of possible alternative supplies that could provide up to a maximum of 10,000 acre-feet of water per year. The Bureau of Reclamation's draft, "Lower Colorado Water Supply Study Planning Report/Environmental Assessment," dated December 1985, results from that authorization.

The Bureau's preferred water supply plan calls for two, with eventual increase to possibly five, wells along and south of the All-American Canal near the International Border with Mexico in the Sand Hills area of Imperial County. Groundwater would be pumped from the well field into the canal for use by the Imperial Irrigation District and Coachella Valley Water District in lieu of Colorado River water. In turn, a like amount of river water would be available for use by nonagricultural noncontract users along the river. The specific well field site was chosen because groundwater pumping in this location would not induce seepage from the canal. Test wells also show that the groundwater quality is comparable to that of Colorado River water and, therefore, would not injure the quality of water being delivered to Imperial and Coachella Valleys.

The groundwater basin from which water would be withdrawn historically received recharge from the Colorado River as underflow from the Pilot Knob area and more directly when the river discharged to what is now the Salton Sea. However, since construction of the All-American Canal, the principal source of recharge has been seepage from the canal. The groundwater basin in the area of the well field contains several million acre-feet of water and could provide a firm water supply for noncontract water users for many years.

The Bureau of Reclamation's preferred plan, which has been over ten years in the making, would provide these noncontract users with a firm and affordable water supply to meet their present annual needs of less that 4,000 acre-feet and to permit future growth to occur along the river in California.

The Board recommends that language be included in the bill to assure that the "law of the river" be protected upon the implementation of this program to avoid any concern among Lower Basin interests. A suggested draft is attached.

The noncontract water users contribute substantially to local economies, and the failure to provide a permanent and dependable water supply for them would have a severe adverse socioeconomic impact on the region. If no action is taken, the Bureau of Reclamation will be required to limit or terminate water use by these individuals, communities, and recreational interests. It is anticipated that this would precipitate lengthy and costly litigation and enforcement proceedings.

We recommend your approval of the bill with the attached amendment.

SUGGESTED WATER RIGHTS

AMENDMENT TO H.R. 5028

SEC. ___. Nothing contained in this Act shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994, 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California, and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), or the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501).

Nor shall any provision of this Act ---

(a) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any groundwater resource, or

(b) otherwise be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right.

Senator MURKOWSKI. Well, that certainly answers my first question.

With regard to the sunset provision on the appropriations for operations and maintenance funds for the Federal portion of the project, is that a necessity that we have such a provision, a sunset provision?

Mr. WILL. Well, it would be our feeling that it would be preferable to have an annual appropriation that does not require they come back to Congress in a few years to provide for that. I think that we would recommend to the committee that that not be included in the final legislation.

Senator MURKOWSKI. Is it not a matter of policy now that all these have sunset provisions in them?

Mr. BROWN. Mr. Chairman, this legislation is the first of its kind to have a sunset provision.

Senator MURKOWSKI. Well, is it not the first of its kind because from now on they want sunset provisions on everything?

Mr. BROWN. I am not aware of any intent on the part of the Congress to provide sunset provisions for operation and maintenance costs on Federal projects.

Senator MURKOWSKI. Well, if you would enlighten me as to what the current policy is on mandatory sunset provisions from the administration, I would be most appreciative.

In the committee report which accompanied H.R. 5028 it says that the Secretary of the Interior should give first priority to contract with Federal agencies who may require a long-term assured water supply to meet the needs. Although that is what the report says, the bill does I find make no reflection to that intent.

Is that your understanding, as well?

Mr. WILL. Well, it would be our hope that the bill would not give a priority to any particular user. The people who live not on Federal land but on private lands in the area certainly need this water as much as the Federal recreation areas do, and it would be our hope that there would be no priority afforded to any particular group.

Senator MURKOWSKI. So you do not think that the report language would in effect establish a Federal water right?

Mr. WILL. We would certainly hope not.

Senator MURKOWSKI. Do you have any suggestion of appropriate language for the bill that would protect existing water rights' users?

Mr. WILL. Yes, and we have submitted a proposed amendment with our statement with respect to that.

Senator MURKOWSKI. Well, I want to thank you, Mr. Will, and you, Mr. Williamson, for your testimony and for your submission of your statements for the record, which is read. I also thank you for your patience in waiting until the conclusion of this hearing as the last witnesses.

We wish you a good day.

The record will remain open for 2 weeks.

This marks the conclusion of our hearing this morning.

[Whereupon, at 12:20 p.m., the hearing was adjourned.]

[Additional statements for the record follow:]

State of North Dakota
OFFICE OF THE GOVERNOR
BISMARCK, NORTH DAKOTA 58505
(701) 224-2200

GEORGE A. SINNER
GOVERNOR

July 22, 1986

The Honorable Frank H. Murkowski
Chairman, Subcommittee on Water and Power
United States Senate
Senate Dirksen Office Building
Washington, D.C. 20510-6150

Dear Senator Murkowski:

Thank you for your request for comments on S. 230, as amended by the bill's sponsor, concerning the bascule gate dispute between the City of Dickinson and the Bureau of Reclamation. First of all, I strongly support S. 230, as it is fair to both parties.

Some background information may be helpful to explain my position in the matter. The need for an additional water supply for Dickinson has been apparent for several years. The addition of a bascule gate to Dickinson Reservoir was determined to be the best short-term solution to Dickinson's water problems. After several years of studies and design work, a contract was entered into between the City of Dickinson and the United States Bureau of Reclamation on July 11, 1979, for the bascule gates. The City of Dickinson's estimated cost was $1,540,000. Although the contract did not "lock" the City or the Bureau into this price, it would be rational to expect that the final cost would be within reasonable limits.

However, this was not the case, as many changes in the design of the bascule gates were required. The continuing problems not only resulted in a substantial increase in costs for construction, but the long delay in project completion resulted in tremendous increases in Bureau overhead and in interest during construction. The interest alone increased from $70,000 to $543,000. The result was that the final cost of $3.15 million was more than double the $1.54 million estimate.

It is also important to note that the City of Dickinson was never in real support of the bascule gate design. In 1980, the City hired a private consulting engineer to study a fixed weir design in an effort to convince the Bureau to change the design. In fairness to the Bureau, by 1980 the project had progressed beyond a point of return. On the other hand, the City had not reviewed the specific details of the bascule gate before this time.

The Honorable Frank H. Murkowski
July 22, 1986
Page 2

It should also be pointed out that bascule gates have not been extensively used in a "northern lake" situation. Probably the main reason for the large price increase is that the Bureau did not adequately design the moveable gate to withstand pressures resulting from ice, two or three feet thick. The result was that on February 21, 1982, the gate failed when a large sheet of ice floated onto the gate. Incidentally, the bascule gate failed within 24 hours of the time water was first stored behind it. This failure required several costly additions to keep ice away from the gate.

Although the exact cost the City should pay may be debatable, I believe the problems and increased costs encountered justify a reduction. It should also be pointed our that the City has incurred additional costs due to the gate. The bascule gate, with all the additions, is more costly to maintain than originally anticipated. The City also suffered downstream flood damages in 1982 when the gate failed.

Therefore, all things considered, the repayment cost included in S. 230, as amended, is reasonable and fair to both the City of Dickinson and the Bureau of Reclamation. I urge favorable consideration of the bill.

Sincerely,

George A Sinner

George A. Sinner
Governor

GAS:lk

cc: Vern Fahy, State Engineer

LOWER COLORADO WATER SUPPLY ACT H.R. 5028
Statement by Jerry Lewis for the Subcommittee on Water and Power

In the grand scheme of worldly matters - this bill is such a small speck on the globe that it almost is non-existant--but, the solution it provides for a few of the world's little people is a matter of life or death. Water lawsuits have flowed for 30 years leaving little people in and around Needles and Winterhaven without water rights or an adequate supply of water. Let me explain--my community is out in the middle of no where, four hours from the nearest city. The majority of these well owners are living off their social security and have been using Colorado River Water for 20 years. For them, there is no other source of water. Without an assured supply of water, what choice would these citizens have except to be forced out of their homes?

There are individuals, communities and recreational interests located along the Colorado River that do not have sufficient water rights to meet their present or future needs. These noncontract water users will shortly be required to close their wells and terminate their use of the Colorado River unless another supply can be provided for them. About half of these noncontract users include recreational lands leased by the Bureau of Land Management, the others are individuals from the town of Winterhaven, and citizens living in and around the City of Needles.

Concern about an adequate water supply for noncontract users led the Colorado River Board to work with the Secretary of the Interior on a Feredal-State task force in 1975 that investigated the problem and recommended a course of action. Following this, Congress, in 1980, authorized the Secretary of Interior to conduct feasibility studies of possible alternative supplies that could provide up to a maximum of 10,000 acre-feet of water per year. My bill simply authorizes the Bureau of Relcamation's recommended project as presented in their December 1985 draft report.

This authorization in not premature. The draft recommendation was submitted for comment in December of 1985. With the comment period long since closed, the Bureau will be presenting their final recommendation within the next 45 days. Every indication we have had shows that the final report recommends this project. With the few legislative days that remain in this session it would be a shame if this legislation was not passed.

The Bureau's water supply plan calls for two to five wells along and south of the All-American Canal. The wells would pump ground water that has seeped from the canal back into the canal. In return, a like amount of Colorado River water would be made available for use by the noncontract users along the river in California. The exchange agreements among the various water users would be executed by the Secretary of the Interior to allow this swapping of water supplies.

The Bureau of Reclamation's peferred plan has been more than then ten years in the making and would supply the people in Duncan Hunter's, Al McCandless' and my district with a firm and affordable water supply to meet their present and future water needs.

The costs of the project and the operation and maintenance costs will be repaid in full with interest under the terms of the Water Supply Act of 1958.

Mr. Chairman, I appreciate your Committee's graciousness in taking the time to hear this legislation, and I appreciate having the opportunity to testify in strong support of the bill.